



# National Instant Criminal Background Check System **NICS**

BUREAU OF INVESTIGATION

NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM

Point-of-Contact States  
Partial Point-of-Contact States  
ATF Alternate Permit States

## User Manual



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## 1.0 SECTION 1 – INTRODUCTION

### 1.1 SCOPE

The *National Instant Criminal Background Check System (NICS) User Manual* serves as a reference document for agencies accessing and using the NICS. The interfacing agencies and systems supporting the NICS include the National Crime Information Center (NCIC), the Interstate Identification Index (III), and state and federal agencies that provide data to the NICS Index.

### 1.2 REFERENCED DOCUMENTS

1. Gun Control Act of 1968
2. Title 18, United States Code (U.S.C.), Section 922 (g)(1-9) and (n), and the definitions in Section 921 (a)(20)
3. Brady Handgun Violence Prevention Act of 1993 (Public Law [P.L.] 103-159)
4. Federal Regulation – 27 Code of Federal Regulations (C.F.R.) Part 478 (Definitions for the Categories of Persons Prohibited from Receiving Firearms) – June 27, 1997
5. Federal Regulation 28 C.F.R. Part 25 – October 30, 1998 (NICS)
6. Federal Regulation 28 C.F.R. Part 25 (Reduced retention period from six months to 90 days) – January 22, 2001 (Effective dates were delayed on March 1, 2001, and May 4, 2001)
7. Federal Regulation 27 C.F.R. Part 478 (P.L. 105-277): Relating to Firearms Disabilities for Nonimmigrant Aliens and to Requirement for Import Permit for Nonimmigrant Aliens Bringing Firearms and Ammunition into the United States – February 2002
8. Omnibus Bill – January 23, 2004 (Effective date July 21, 2004): Requiring 24-Hour Destruction
9. Federal Regulation 28 C.F.R. Part 25 – July 20, 2004: Implementing the 24-Hour Destruction, Federal Firearms Licensee Audit Log, “Unresolved,” Point-of-Contact (POC) States Transmitting State Determinations to the NICS, and the Voluntary Appeal File (VAF)

### 1.3 BACKGROUND OF THE NICS

Congress passed and enacted P.L. 103-159, known as the Brady Handgun Violence Prevention Act (Brady Act), on November 30, 1993. The Brady Act amended Title 18 U.S.C. § 922 and contained an Interim Provision and a Permanent Provision. During the Interim Provision, in effect from February 28, 1994, until November 29, 1998, Chief Law Enforcement Officers (CLEOs) could check during the 5-day waiting period to determine whether the transfer of a firearm would violate local, state, or federal law.

## 1.4 THE BRADY ACT

The NICS was fully implemented on November 30, 1998, to meet the Brady Act requirement that background inquiries be performed on prospective gun buyers before a Federal Firearms Licensee (FFL) is authorized to transfer a firearm to a nonlicensee. The Brady Act required that the NICS do the following: (1) log all firearm transactions by assigning a unique identification number (NICS transaction number [NTN]) to each transaction; (2) provide the FFL (for example, gun dealers) with the NTN; and (3) destroy all records in the system that resulted in a proceed response (other than the NTN and the date that the NTN was assigned).

Firearm background checks are initiated by the FFLs, who contact the FBI Call Centers or a designated state POC. The Brady Act required that FFLs contact the NICS to determine whether the transfer of a firearm to an unlicensed person would violate 18 U.S.C. § 922 (g) or (n) or state law. The purpose of the NICS is to immediately provide authorized law enforcement agencies or the FFLs with information required to determine whether to allow or deny a firearm transfer. The NICS itself does not make such decisions; it provides information necessary to make the decision.

Relevant federal law (the Gun Control Act of 1968 [GCA] as amended) prohibits the sale of a firearm to any person who:

- Has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year.
- Is a fugitive from justice.
- Is an unlawful user of or addicted to any controlled substance.
- Has been adjudicated as a mental defective or committed involuntarily to a mental institution.
- Is an alien illegally or unlawfully in the United States.
- Has been discharged from the Armed Forces under dishonorable conditions.
- Having been a citizen of the United States, has renounced U.S. citizenship.
- Is subject to a court order that restrains the person from harassing, stalking, or threatening an intimate partner or child of such intimate partner.

- Has been convicted in any court of a misdemeanor crime of domestic violence.
- Is under indictment for a crime punishable by imprisonment for a term exceeding one year.

For more information about the federal prohibitors, see Section 3.0.

The Brady Act allows three exceptions to the requirement that a check of the NICS be performed prior to each transfer. They are as follows:

1. Persons who have presented to the FFL a valid alternative permit (no more than 5 years past the date of issuance) that qualifies as a Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) approved alternative to the background check requirement of the Brady Act.
2. Persons who have received approval from the Secretary of the Treasury for transfers under Section 5812 of the Internal Revenue Code of 1986.
3. FFLs who operate under conditions certified by the Secretary of the Treasury as impracticable for compliance with a NICS background check.

Questions about these exceptions, particularly which alternative permits are valid, should be directed to the ATF for interpretation. For more information about processing an alternative permit, see Section 7.0.

## **1.5 DATABASES ACCESSED DURING A NICS BACKGROUND CHECK**

When an FFL provides information on a prospective gun buyer (such as name, date of birth, sex, race, and state of residence) to an FBI Call Center or a state POC, the agency accesses the NICS, which, in turn, searches three FBI-managed databases that might contain information that is relevant in determining whether the prospective buyer is authorized to purchase a firearm. The databases are (1) the NCIC, (2) the III, and (3) the NICS Index. For prospective purchasers who are non-U.S. citizens, the process includes a search of the Immigration and Customs Enforcement (ICE) databases when information that the purchaser supplies indicates that the purchaser claims to be a non-U.S. citizen.

### **1.5.1 NATIONAL CRIME INFORMATION CENTER (NCIC)**

The NCIC is a nationwide, computerized database of criminal justice information. The records that comprise the NCIC are maintained by local, state, and federal law enforcement agencies. A NICS check accesses the following NCIC files:

**Foreign Fugitive File** – This file contains records on persons wanted in connection with offenses committed outside the United States.

**Immigration Violator File** – This file contains three categories of records:

**Deported Felon** – Records on aliens who have been deported for involvement in drug trafficking, firearms trafficking, or serious violent crimes.

**Absconder** – Records for individuals with an outstanding administrative warrant of removal from the United States who have unlawfully remained in the United States.

**National Security Entry-Exit Registration System (NSEERS)** – Records for individuals who are subject to monitoring for national security or law enforcement interests while in the United States.

**Protection Order File** – This file contains court orders that are issued to prevent acts of domestic violence against a person or to prevent a person from stalking, intimidating, or harassing another person. Both civil and criminal state courts issue such orders.

**Wanted Person File** – This file contains records on persons for whom a federal warrant, felony warrant, or misdemeanor warrant is outstanding, including domestic and foreign warrants.

**Violent Gang and Terrorist Organization File (VGTOF)** – This file provides information about violent gangs and terrorist organizations and their membership to law enforcement personnel. The FBI developed the file to facilitate criminal investigations through the exchange of this information.

**U.S. Secret Service Protective File** – This file contains records on individuals who may pose a threat to the President or others afforded protection by the U.S. Secret Service (USSS).

**SENTRY File** – This file contains records on individuals incarcerated by the U.S. Bureau of Prisons. Note: This file is not yet active.

**Convicted Person on Supervised Release File** – This file contains records on subjects who are put under specific restrictions during their probation, parole, or supervised release sentence following imprisonment.

**Convicted Sexual Offender Registry** – This file contains records on individuals who have been convicted of a criminal offense against a minor,

have been convicted of a sexually violent offense, or are adjudicated as sexually violent predators.

### 1.5.2 INTERSTATE IDENTIFICATION INDEX (III)

The III contains the criminal history records of more than 45 million subjects. These are records of people born in 1956 or later who have an FBI record; persons born prior to 1956 whose first arrest fingerprint card was submitted to the FBI in 1974 or later; and numerous older records that have been converted to an automated format. The III records are maintained by the FBI and include information on persons who:

- Are fugitives from justice.
- Have been convicted of a crime punishable by imprisonment for a term exceeding one year.
- Have been convicted of a misdemeanor crime of domestic violence.
- May be subject to state firearm prohibitions.

In most cases, a state participating in the III provides a record within seconds of a request transmitted through the NCIC. The III concept decentralizes the criminal history record-keeping responsibility by requesting that the state owning the record, rather than the FBI, be primarily responsible for record maintenance and dissemination. Forty-eight state identification bureaus participate in the III by maintaining and disseminating their records.

The III has been enhanced to include the Identification for Firearms Sales (IFFS) Program. These flags provide immediate identification of individuals who are disqualified from purchasing a firearm. There are three different IFFS flags:

- **Disqualification for Firearms – D** – This flag indicates that the subject's record contains disqualifying information under federal law and that the subject is prohibited from purchasing a firearm. If identity is a match, a transaction that receives this III response must be DENIED.
- **No Disqualification for Firearms – C** – This flag indicates that the subject's record contains no disqualifying information under 18 U.S.C. § 922 g(1) or (9) and that the subject may be qualified to purchase a firearm. A transaction that receives this III response must be researched for additional state and federal prohibitors, taking into consideration laws in both the buyer's state of residence and the state of purchase.

- **Court Status Pending Conviction Status Unknown – X** – This flag indicates that the subject's court disposition is pending or conviction status is unknown. A transaction that receives this III response must be researched for possible state and federal firearms disqualifiers.

### 1.5.3 NICS INDEX

The NICS Index contains records provided by local, state, and federal agencies on persons who are disqualified under federal law from receiving firearms but who may not be on record in any criminal files. The NICS Index contains information on the following federally prohibited categories:

- **Denied Persons** – This file contains information provided by local, state, and federal law enforcement. It includes disqualifying data not contained in any other file accessed by the NICS. (See 18 U.S.C. § 922 [g][1].)
- **Illegal/Unlawful Aliens** – This file contains information provided by the ICE and local and state law enforcement agencies on illegal or unlawful aliens. (See 18 U.S.C. § 922 [g][5].)
- **Controlled Substance Abusers** – This file contains information provided by local, state, and federal law enforcement agencies on persons who are unlawful users of or addicted to any controlled substance. (See 18 U.S.C. § 922 [g][3].)
- **Dishonorable Dischargees** – This file contains information provided by the U.S. Coast Guard and the DOD on persons who have been discharged from the Armed Forces under dishonorable conditions. (See 18 U.S.C. § 922 [g][6].)
- **Citizenship Renunciants** – This file contains information from the Department of State on persons who have renounced their U.S. citizenship. (See 18 U.S.C. § 922 [g][7].)
- **Mental Defectives/Commitments** – This file contains information from the Department of Veterans Affairs and local, state, and federal law enforcement agencies on persons who have been adjudicated mentally defective or have been committed to a mental institution. The FBI will accept information on mentally deficient subjects received through other sources once validated. (See 18 U.S.C. § 922 [g][4].)

## 1.6 ICE DATABASES

After the terrorist attacks on September 11, 2001, the Attorney General directed the ATF and the FBI to enhance enforcement of the general prohibition on nonimmigrants with exceptions and on illegal aliens possessing and receiving firearms. This enhanced enforcement requires that the NICS conduct an Immigration Alien Query (IAQ) for all non-U.S. citizens attempting to purchase or possess a firearm. An IAQ provides a cross-reference of databases held by the ICE.

Users of the NICS must request an IAQ whenever the country of citizenship contains anything other than "United States." The user will receive an automatic response from the ICE providing the immigration status of the individual. All aliens, including immigrants and nonimmigrants, must be legally and lawfully in the United States in order to possess, purchase, or acquire a firearm. Conducting an IAQ is the only way to prove lawful status of aliens.

In addition to meeting the requirements of an IAQ, a non-U.S. citizen who is also a nonimmigrant must meet the requirements of and claim that they fall under one of the categories of exceptions to the general prohibition, such as possession of a valid hunting license. (See Section 5 of this manual for complete instructions on background checks for non-U.S. citizens.)



## **2.0 SECTION 2 – MINIMUM STANDARDS FOR NICS POINT-OF-CONTACT (POC) AGENCIES**

### **2.1 ADVANTAGES OF POC STATES**

The development, implementation, maintenance, security, and integrity of the NICS is the responsibility of the Attorney General and the FBI. However, the efficient and effective execution of the provisions set forth in the Brady Act requires close cooperation between the FBI and state agencies. In fact, state agencies serving as POCs have several advantages over the FBI's NICS:

- States have access to additional records not available in the NICS (such as records on mental health, chronic drug abuse, etc.).
- The criminal history records maintained by the states often have more complete and timely information than is available via the III. Specifically, states may have disposition data prior to its availability via the III.
- States are better able to interpret their own criminal history record data and to make a qualification decision within the time restrictions set forth in the Brady Act. This is particularly true in the case of domestic violence cases or felony convictions.
- States performing background checks are better able to determine if a person is disqualified based on the state statutes. (It is important to note that the Brady Act does not prevent states from imposing additional restrictions on the sale of firearms, including waiting periods and firearm disabilities, besides those imposed by federal law.)
- States often know under what conditions a convicted person's rights have been restored rendering the person relieved from a federal firearms prohibitor.

### **2.2 OVERVIEW OF NICS POLICY REQUIREMENTS**

In order to act as a POC, a state must guarantee that a designated state agency or agencies can provide a basic level of service to the FFLs. The guidelines established in this manual represent the minimum service standards. An agency serving as a POC must have the ability to search records in the NICS Index, the NCIC, and the III using the name, sex, race, date of birth, state of residence, and citizenship (if a non-U.S. citizen) information provided by a potential purchaser. A designated local or state official must review and evaluate matching records returned by the NICS and any available state records to determine (1) whether the prospective purchaser is the subject of the matching records, and (2) whether

the records provide information demonstrating that the prospective purchaser is disqualified from receiving a firearm under state or federal law.

To qualify as a POC for the NICS, a state must be able to provide, at the minimum, the following services:

- Access the NICS as part of the background check process. The POCs are not required but are encouraged to search available state data sources as part of the background checks they perform.
- Ensure that all FFLs within the state are provided access to the NICS through a designated state agency or network of state or local agencies. The FBI NICS Section recommends that a single state POC be established.
- Notify, with the assistance of the ATF and the FBI, the FFLs within the state about procedures for contacting the POC and about all other procedures related to firearm background checks.
- Have automated access to the NICS via the NCIC telecommunications network.
- Offer telephone access to the FFLs, at a minimum, from 10 a.m. to 9 p.m., Monday through Saturday, and during normal retail business hours within the state on Sundays.
- Have procedures in place to ensure that only authorized personnel initiate NICS background checks and that they are processed only for purposes authorized under the NICS regulations.
- Provide supporting processes and personnel to review record data, make disqualification decisions, respond to the FFLs, and manage an appeal process.
- Refrain from denying the purchase of a firearm based on an arrest without a disposition unless a state law is in place authorizing that practice.
- Deny firearm sales based on criteria imposed by the GCA of 1968 (18 U.S.C. § 922), as amended, or by state law (whichever can be more restrictive).
- Ensure that the POC adheres to all applicable federal laws regarding the NICS.

- Adhere to federal regulations that dictate the purging of proceed transaction data according to the current retention period as published in the C.F.R. This time limit may be exceeded only if state law specifically authorizes a longer retention period.
- Ensure that a state-generated State Transaction Number (STN) for a NICS inquiry can be cross-referenced with the NTN generated by the NICS.
- Ensure that an IAQ is conducted through the ICE on all non-U.S. citizen transactions.
- Ensure that all IFFS flags, if used within the state, are properly set for III records.
- Refrain from denying a transaction based solely on the existence of a protective order without consideration of the Brady Indicator, the requirements of 18 U.S.C. § 922 (g)(8), state law, or the specific provisions of the protective order.
- In decentralized states, ensure that information from the ATF and the FBI is disseminated to all agencies performing NICS background checks. Provide guidance and training regarding this information in order to ensure consistency throughout the state.
- Ensure that transactions have Originating Agency Identifiers (ORIs) ending in any numeric character or the alphabetic character J or Y.
- Ensure that final transaction status is transmitted to the NICS in accordance with Federal Regulation 28 C.F.R. 25.

### **2.3 CONCEPT OF OPERATION**

The Brady Act requires that the FFLs be able to contact the NICS by telephone or by other electronic means for immediate information on whether receipt of a firearm by a prospective transferee would violate state or federal law. Although the Brady Act does not specify whom the FFLs should contact to request a background check, the NICS Concept of Operations—approved by both the CJIS Advisory Policy Board (APB) and the Attorney General—envisioned state and federal law enforcement would work together to ensure that complete background checks are performed. More specifically, the CONOPS anticipated that states would designate a POC for the FFLs to contact for NICS checks.

There are several reasons for a state to designate a POC. First, the state POC may have access to information not readily available to the FBI, such as state

mental health records, chronic drug abuser records, and other noncriminal records that may prohibit a person from possessing a firearm. In addition, state criminal history records are better interpreted and more complete at the state level. Therefore, the state POCs may be better able than the FBI to prevent the sale of firearms to convicted felons, wanted persons, and others prohibited by state or federal statutes.

As a POC, an agency is required to review and confirm any matching records returned by the NICS, to identify disqualifying information, and to advise the FFL whether the transfer of a firearm would violate state or federal law. The POC does the following:

- Notifies the FFLs in the state of the methods of access. (Telephone access is required as a minimum means of contact.)
- Conducts a NICS search and may access additional local and state databases authorized by state law.
- Reviews responses to determine whether individuals are allowed to possess firearms in the state.
- Notifies the FFLs of the determination.

A POC is responsible for conducting background checks in accordance with NICS policy and procedure. The POC must assign an NTN or the STN traceable to all NTNs. Giving the transaction number (NTN or STN) is optional when notifying the FFL of a denied response; however, the FBI NICS Section recommends that an STN be assigned to denied transactions to provide a means for tracking an NTN in case of an appeal.

## 2.4 ACCESS TO THE NICS

An electronic interface via the NCIC telecommunications network serves two functions: it connects the state POCs to the FBI NICS, and it permits a tape-based data exchange. Using the electronic interface, the POCs submit search requests, enter record requests, send messages, and update the NICS Index. The interface also permits an electronic message exchange between the states and the NICS. The tape-based interface enables batch data exchange on magnetic tape for status notifications, status messages, and updates to the NICS Index.

A POC performs a NICS search request electronically via the NCIC Front End (NCIC-FE), which incorporates a search of the NCIC, the III, and the NICS Index databases. Upon receipt of the State Search Request, the NICS does a search

of its own databases (NICS Index), sends a Query Warrant (QW) to the NCIC, and sends a Query History (QH) with the purpose code of F for Firearms to the III.

When requesting a NICS search, a POC must complete certain required data fields. The HDR, MKE, ORI, Name, Sex, Race, Date of Birth, State of Residence, Citizenship (if a non-U.S. citizen), and Purpose Code are all mandatory fields. The sex must be either M or F. The Date of Birth field may be provided as MMDDYY or YYYYMMDD. The FFL or State Firearms Licensee (SFL) field is mandatory except when a purpose code of P is given and the state is a permit state or when a purpose code of A is used for an administrative search. The State of Residence must match the State of Purchase when a purpose code of H, B, or P is used. (See Section 2.7 for more information on purpose codes.) The height, weight, social security number, miscellaneous number, place of birth, STN, and attention fields are optional.

## 2.5 INTERFACING WITH THE NICS

States serving as POCs for the NICS must have programming that supports an interface with the NICS via the NCIC telecommunications network. This interface includes two modes. The first provides an electronic connection between the NICS and the states. It is an application layer that uses the NCIC communications interface to communicate with the NICS. The POCs must be able to use this interface to electronically submit search requests, record requests, denial notification requests, denial overturned requests, delay notification requests, and proceed notification requests—and to add, modify, supplement, cancel, or display a denied person's record in the NICS Index. This interface also enables an electronic message exchange between the NICS and the POCs.

The second mode is a tape-based interface that permits batch data exchange on magnetic tape for notification messages and updates to the NICS Index.

### 2.5.1 INTERFACE REQUIREMENTS

The POCs must be able to transmit and receive the following transactions:

- (a) Query NICS (QN) or (b) Query NICS All Protection Orders (QNP) and
- (c) Query NICS Records (QNR).

- **QN** – searches records in the NCIC Wanted Person, Foreign Fugitive, Protection Order, Immigration Violator, Convicted Person on Supervised Release, Convicted Sexual Offender Registry, USSS Protective Files, the III, and the NICS Index and returns all possible matching records; however, the QN returns only protection order records that contain a Brady Indicator of Y (the individual is disqualified under the Brady Act) or

U (i.e., it is unknown whether the protection order is a Brady disqualifier). Protection order records with a Brady Indicator of N, meaning the protection order is not a federal disqualifier, are not returned in a response to a QN. These are returned only through a QNP.

- **QNP** – searches records in the NCIC Wanted Person, Foreign Fugitive, Protection Order, Immigration Violator, Convicted Person on Supervised Release, Convicted Sexual Offender Registry, USSS Protective Files, the III, and the NICS Index. The system will return all possible matching records, including all protection orders.
- **QNR** – requests a specific record that was identified in a response to a QN or QNP transaction. The message is essential for retrieving details of the III criminal history records.

An Implied Proceed is the initial, automatic status applied to all state transactions processed through the NICS. These transactions are retained in this status unless the state changes the status through the NCIC-FE. If a state processes a check and does not make the decision to deny or proceed on that same day, the POC must send the NICS a NICS Delay Notification (NDN). Otherwise, if the POC discovers a disqualifier on the next day, the transaction will have been purged; the state will be unable, therefore, to provide a NICS Denial Notification (NDN) response to ensure that the NICS retains the denied transaction. The following are mandatory notification messages that a POC must program:

- **NICS Denial Notification (NDN)** – This message notifies the NICS that a previously submitted QN or QNP resulted in the denial of a firearm transfer. The NDN message allows the NICS to flag the transaction as a denial and retain the transaction according to record retention criteria for denials. If an NDN is not received for a QN or QNP, the NICS assumes that the transaction resulted in an approval, and the transaction will be purged from the system log according to purge criteria for proceed transactions. Without an NDN, the rights of an appellant who may ask for an appeal through the state or the FBI NICS Section would be hindered. In addition, the FBI provides the ATF with an electronic copy of transactions resulting in denials. The ATF may use these records to pursue legal action, since falsification of the ATF Form 4473 (completed prior to a firearms transfer) is a federal offense. The NDN messages are required pursuant to Federal Rule 28 C.F.R. 25.
- **NICS Denial Overturned (NDO)** – This message notifies the NICS to change the status of a denied QN or QNP transaction to a proceed transaction.

- **NICS Delay Notification (NLN)** – This message notifies the NICS that a previously submitted QN or QNP is to remain in delay status. The NLN message allows the NICS to retain the transaction during the research process. If an NLN is not received for a QN or QNP, the NICS assumes that the transaction resulted in an approval, and the transaction will be purged from the system log according to purge criteria for proceed transactions.
- **NICS Proceed Notification (NPN)** – This message notifies the NICS to change the status of a delayed QN or QNP transaction to a proceed transaction.

### 2.5.2 BATCH DATA TRANSFER

A batch data transfer interface allows the states to update subject information to the NICS Index for individuals prohibited from purchasing firearms. Only the state that originally entered the NICS Index record is authorized to submit updates to the record.

In addition, a state may submit NDN, NDO, NLN, and NPN messages to the NICS in batch. These records update the status of the NICS transaction. Only the state that originally submitted the search request is authorized to change the NTN status.

The batch data transfer interface uses physical media for the transfer of information to the NICS. Batch data are provided in batch mode on magnetic tape in accordance with the specified detailed design characteristics. Batch data may be submitted as a series of records on an IBM standard 3480 magnetic cartridge tape, a CD-ROM, or a 3.5" diskette.

For additional assistance on batch data transfer, the data element definitions, and the detailed characteristics of each record type necessary, agencies may contact the FBI NICS Section by writing to:

Federal Bureau of Investigation  
NICS Section  
Attention: NICS System Liaison Analyst  
Module A3  
1000 Custer Hollow Road  
Clarksburg, WV 26302-4278

### 2.6 LONG GUN NOTIFICATION

A Long Gun Notification is an electronic message that can be generated by the NICS to notify a POC state agency via the NCIC-FE whenever a resident of

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its state is attempting to purchase a long gun in another state. The NICS will forward this administrative message to the purchaser's state of residence only if that state had previously agreed to accept the other agency's inquiries and respond to them with any disqualifying information. The receiving agency must have procedures in place for handling these messages. For example, if the state of Georgia has requested that the NICS activate the Long Gun Notification, and if a resident of Georgia attempts to purchase a firearm in Tennessee, then the NICS will forward a Long Gun Notification from Tennessee to Georgia.

The POCs may participate in the Long Gun Notification service by writing to:

Federal Bureau of Investigation  
NICS Section  
Attention: NICS System Liaison Analyst  
Module A3  
1000 Custer Hollow Road  
Clarksburg, WV 26302-4278

## 2.7 PURPOSE CODES

When a state performs a background check through the NICS via the NCIC-FE requesting a search of the NCIC, the III, and the NICS Index databases, the state must use the appropriate purpose code of F for firearms. In addition to the F purpose code, the state should use additional purpose codes to identify the type of checks (long gun, handgun, permit, etc.). The FBI NICS Section uses this information to compile statistics and identify misuse of the NICS.

The purpose codes identifying the reason for a search request are as follows:

A – Administrative Purposes  
P – Permit Check  
H – Handgun Sale  
L – Long Gun Sale  
B – Sale of both a Handgun and a Long Gun

The FBI NICS Section uses additional purpose codes to differentiate transactions related to pawned firearms from other firearm sale transactions conducted by pawn shops. There are three types of pawnshop transactions: a firearm sale (similar to any other FFL retail business); a collateral pawn (pre-pawn), which is an optional transaction that may be conducted prior to a firearm pawn to ascertain the subject's eligibility to redeem the firearm; and a pawn redemption, which is a required transaction that occurs when the pawn ticket holder redeems a firearm. Accordingly, the following six additional codes were established:

C – Collateral of both a Handgun and Long Gun  
D – Collateral Handgun

E – Collateral Long Gun  
R – Redemption of both Handgun and a Long Gun  
S – Redemption Handgun  
T – Redemption Long Gun

### **2.7.1 PURPOSE CODE STATE TAILORING TABLE**

The State Tailoring Table blocks FFLs from requesting background checks from the FBI NICS Section that are more properly conducted by the state POC. For example, a purpose code within the table would block an FFL in a partial POC state that conducts its own background checks on handgun purchases from requesting such a check through the FBI Call Centers. The FBI offers the State Tailoring Table service to POC states to assist them in compiling accurate firearm statistics and to ensure that they do not lose revenue generated by the background checks. POC states wishing to participate in State Tailoring Table Call Center filtering may request the service by writing to:

Federal Bureau of Investigation  
NICS Section  
Attention: NICS System Liaison Analyst  
Module A3  
1000 Custer Hollow Road  
Clarksburg, WV 26302-4278

## **2.8 SEARCH ALGORITHMS**

### **2.8.1 NCIC Search Algorithm**

Because of the inherent limitations of a subject name search, the NCIC search algorithm is designed to match, somewhat loosely, the subject of a search to the potential matches in the database. In an attempt to reduce the number of false positives generated by a search, the FBI has developed a filter and enhanced the scoring of the search algorithm. Agencies may ask the FBI NICS Section, in writing, to filter its NCIC responses. Under no circumstances will the FBI filter responses to the POCs without such a request. The POCs desiring to participate in this enhanced filtering service may do so by writing to:

Federal Bureau of Investigation  
NICS Section  
Attention: NICS System Liaison Analyst  
Module A3  
1000 Custer Hollow Road  
Clarksburg, WV 26302-4278

### 2.8.2 III Search Algorithm

The FBI NICS modified the III Search Algorithm as follows:

- The Del, Der, Van, and Von last name prefixes are no longer deleted. Instead, the prefixes are joined with the main part of the last name. The prefixes have also been integrated into the Leading Character Translation Table.
- The number of First Name Group (FNG) Codes has been increased.
- The number of Last Name Group (LNG) Codes has been increased.
- Only an FNG and LNG are used to form a bin number. There is no Date of Birth Group Number (DGN) because the date of birth is not always a part of the NICS Index subject data.
- The Nickname Table has been expanded to include more nicknames, increasing the accuracy of the name search.
- Scoring, threshold computation, and evaluation techniques differ from those used in the original III search algorithm.

The following are components of the III algorithm that the NICS does not use:

- The NICS does not score scars, marks, tattoos (SMTs), or fingerprints.
- The NICS does not use any name matrices during scoring because the algorithm examines only how closely the subject name and database name match.
- The NICS does not use the following name matrices:

Name/sex scoring matrix during sex scoring.

Given name scoring matrix during first name scoring.

Surname scoring matrix during surname scoring.

Middle initial scoring matrix.

### **2.8.3 NICS Search Algorithm**

The NICS search algorithm pertains only to the NICS Index and has no impact on the NCIC and the III record searches. The NICS will return as part of its response all matches received from the NCIC and the III. The NICS will score and sort the NCIC matches and will return all matches received in sorted order, unless filtering has been requested by the state.

### **2.8.4 NICS Index Search Algorithm**

Names are selected from the NICS Index using a modified version of the III name search algorithm. Because some of the records in the NICS Index contain only a person's name and date of birth, the NICS search algorithm has to be unique. The existence of other data varies depending on which local, state, or federal agency provided the information.

The algorithm was designed to detect a record in which the subject has provided a name that is a slight variation of the name contained in the NICS Index database. The name search algorithm was designed to be flexible and geared to search, if necessary, hundreds of thousands of records solely by name.

## **2.9 ADMINISTRATIVE MESSAGES**

A POC must be able to receive the NICS unsolicited in-service and out-of-service messages. The NCIC-FE administrators issue these messages after being notified by the NICS administrators of a change in the NICS status. Additional messages may be added at a later date.

## **2.10 INTERFACE CONTROL DOCUMENT (ICD)**

The Interface Control Document (ICD) defines the functional and physical design of the external interfaces between the NICS/FBI element and the interfacing agencies and systems, including the NCIC, the III, and the ATF and other federal agencies providing data to the NICS Index.

This document covers all of the interfaces related to the NICS/FBI except for the NICS/FBI user interface for FBI service providers, which is defined in the NICS/FBI Element Specification. The ICD identifies the design constraints that each interfacing agent must accommodate to ensure a workable interface. It explains messages, protocols, data transfer media, and data transfer methods.

The ICD is a living document, which is updated and revised whenever there are additions to the interfacing agencies or changes in the interface design methodologies. The ICD is consistent with the NICS/FBI Element Specification

that provides the high-level interface requirements for NICS/FBI. A POC may access an electronic copy of the ICD on Law Enforcement Online (LEO) at [www.leo.gov](http://www.leo.gov) or request a hard copy by writing to:

Federal Bureau of Investigation  
NICS Section  
Attention: NICS System Liaison Analyst  
Module A3  
1000 Custer Hollow Road  
Clarksburg, WV 26302-4278

## **2.11 SEARCH RESPONSE REQUIREMENTS**

If—as a result of a NICS check—a POC determines that a prospective purchaser is disqualified from possessing a firearm under state and/or federal law, the POC must notify the FFL within 3 business days of the initiation of the NICS background check. By federal law, FFLs may transfer the firearm if they do not receive the NICS results before 3 complete business days have elapsed.

The POCs must, at the minimum, employ the disqualifiers identified in the GCA (18 U.S.C. § 922), as amended, when determining whether a firearm transfer may proceed. In making such determinations, the POCs must apply the ATF definitions described in 27 C.F.R. Part 478 and the final NICS regulations as published in the Federal Register. These and other official documents are easily accessible via the following Internet address:  
[www.fbi.gov/programs/nics/index.htm](http://www.fbi.gov/programs/nics/index.htm).

The POCs are encouraged but not required to search available state data sources as part of the background checks they perform. They may also consider information received from the NICS along with any additional or more restrictive disqualifiers contained in state statutes.

Each proceed or deny response made within the 3-business-day time frame shall be accompanied by a unique transaction number (either the NTN or the STN). A business day is defined as any 24-hour day (beginning at 12:01 a.m.) during which state government offices are open in the state in which the firearm transaction is to take place. For example, if an FFL requests a NICS background check at 9 a.m. on Friday, and state offices are closed on Saturday and Sunday, then the dealer must wait until 12:01 a.m. on Thursday to transfer the firearm unless a response to proceed is issued prior to that time.

If a state statute invokes a period that is longer than the federal 3-business-day time frame, the state statute supersedes the federal law.

### **2.11.1 PROCEED**

When the POC finds no evidence of potentially disqualifying data, it must respond to the FFL immediately with a unique identification number (NTN or STN) and an authorization to proceed.

### **2.11.2 DELAY**

When the POC discovers evidence of potentially disqualifying data, it must immediately inform the FFL to delay the transfer pending final determination. Within 3 business days, the POC should provide the FFL with the final determination if available. The POC must forward an NLN message to the NICS prior to the completion of the operational day on which the transaction was initiated.

### **2.11.3 DENY**

When a POC determines that an individual is disqualified from receiving the firearm, the POC must immediately inform the FFL that the transfer may not proceed and provide the FFL with a unique identifying number (NTN or STN). The POC must forward an NDN message to the NICS once the determination to deny is made.

## **2.12 CUSTOMER SERVICE**

In addition to initiating NICS background checks on the customer's behalf, the POCs should provide the following to the FFLs they service:

- Verbal and written explanations of the legal requirements for NICS background checks and explanations on the use and misuse of the system.
- Resolution of problems encountered by the FFLs in their use of the NICS.
- General information about the NICS, including an explanation of the appeal process.

## **2.13 APPEAL PROCESS**

The POCs must develop a procedure whereby denied persons may appeal the determination. The POCs must provide these procedures to the FFLs they serve. These procedures must include, at a minimum, the following:

- The POC must ensure that denied individuals are aware of an appeal process.

- When a denied person requests in writing the reason for the denial, the POC must provide a written response documenting the reason within 5 business days of receipt of inquiries.
- The POC must have procedures in place to accept challenges to the accuracy of state-maintained records.
- The POC must ensure that state-maintained records found to be in error are corrected and must provide the subject of the record with a written confirmation of the change in status to present to the FFL. The POC also should ask the FBI to update its records.
- The FBI NICS Section requires that requests for an explanation for a denial be made in writing to the FBI. The POCs, at their discretion, may waive the requirement for a written request. However, they must respond to written appeals in writing. Because of concerns related to the Privacy Act, the POCs must ensure that only the subject of the record receives the records that were used to deny the transaction.

An individual may request the reason for the denial from the agency that conducted the NICS check (either the FBI or the local or state law enforcement agency serving as a POC). The FFL must provide to the denied individual the name and address of the denying agency and the unique transaction number (NTN or STN) associated with the NICS background check.

The Brady Act requires that the denying agency must respond in writing to the individual with the reason for the denial within 5 business days from the receipt of the individual's request. The response should indicate whether additional information or documents are required to support an appeal. For example, if the appeal involves a claim that the record in question does not pertain to the individual who was denied, fingerprints may be required to resolve the claim.

If individuals wish to challenge the accuracy of the record upon which the denial is based or wish to assert that their rights to possess a firearm have been restored, they may make application to the denying agency (i.e., either the FBI or the POC). If the denying agency is unable to resolve the appeal, that agency must provide the individual with the name and address of the agency that originated the document containing the information upon which the denial was based. The individual may then apply for correction of the record directly to the agency from which the record originated. If the record is corrected as a result of the appeal to the originating agency, the individual may notify the denying agency. The denying agency will, in turn, verify the record correction with the originating agency and take all necessary steps to correct the record in the NICS.

If an individual wishes to appeal a denial that was based on a NICS Index record contributed by a federal agency, he or she may be referred directly to the contributing agency. If a POC requires clarification of a NICS Index record prior to making a final determination on the firearms transfer, it may contact the local, state, or federal agency that entered the NICS Index record or telephone the FBI NICS Section for assistance. The FBI will then contact the federal agency to obtain additional information for the state POC.

An individual who was denied by a POC may elect to challenge the accuracy of the record by writing directly to the FBI NICS Section. The applicant may submit a written request for further investigation to:

Federal Bureau of Investigation  
NICS Section  
Attention: Appeal Services Team  
Module A  
1000 Custer Hollow Road  
Clarksburg, WV 26302-4278

Upon receipt of such a request, the FBI NICS Appeal Services Team (AST) contacts the POC that denied the transaction or the agency that was the source of the disqualifying data and asks the agency (1) to verify that the record in question pertains to the individual who was denied, or (2) to verify or correct the challenged record. The NICS AST evaluates the information it receives from the individual and the response it receives from the POC or the agency that was the data source. If the information results in a correction to the record, the NICS AST notifies the individual, corrects the erroneous information in the NICS, and provides the corrected information to the agency that was the source of the erroneous records.

If the originating agency provides a notice of correction of a contested record, the NICS AST or the agency that contributed the record corrects the data in the NICS. The denying agency provides a written confirmation of the change in status to the individual for presentation to the FFL. If a successful appeal occurs more than 30 days after the initial check, the FFL working through the POC must recheck the NICS before allowing the transfer. When multiple disqualifying records form the basis for a denial, the individual must pursue a correction for each record.

**Note:** If the NICS Section has denied a transaction by mistake and a legal permanent resident appeals, the transaction should be cancelled. The appeal letter should explain to the alien that he or she must have 90 days' continuous state residency in legal status in order to obtain a firearm from an FFL.

**2.14 AVAILABILITY**

The FFLs must be able to contact the POC to request a NICS check during their normal business hours. The FBI's hours of operation serve all time zones from the east to west coasts plus Alaska, Hawaii, and several U.S. territories, seven days per week, from 8 a.m. to 1 a.m. Eastern Time (ET) with the exception of Christmas Day, when no service is available.

The period from 1 a.m. to 8 a.m. ET is the scheduled downtime assigned to the NICS. This downtime is used for back-up operations, reindexing databases, system testing, and other nightly batch processes. The current scheduled downtime is subject to change.

**2.15 RECORD RETENTION**

The Consolidated Appropriations Bill H.R. 2673 requires that local and state law enforcement agencies serving as POCs destroy a potential purchaser's identifying information relating to a proceed transaction within 24 hours of notification to an FFL. (See Federal Regulation 28 CFR Part 25, July 20, 2004.)

All inquiry and response messages (regardless of media) and all other records relating to the person or the transfer created as a result of a NICS check that allows a transfer must be destroyed within 24 hours of notification to an FFL—unless the records were part of a system created and maintained in accordance with state law that specifies otherwise.

The 24-hour destruction regulation applies to all the POC and Partial POC states unless state authority specifies otherwise. The 24-hour destruction rule does not apply to transactions conducted with a purpose code of P for Firearms or Explosive Permits. Transactions conducted through the NICS with a purpose code of P will be maintained in the NICS for up to 90 days.

**2.16 FEE**

The FBI does not charge the POC states a fee for accessing the NICS.

**2.17 SYSTEM SECURITY**

The POCs must comply with the *CJIS Security Policy* and other applicable federal laws. If the POC allows the FFLs to request NICS background checks via an electronic access mechanism, the POC must ensure that appropriate security procedures are in place to prevent unauthorized access to the NICS.

## 2.18 NICS COMPLIANCE AUDITS

Any local or state agency accessing the NICS is subject to NICS compliance audits. The FBI developed the audit program to verify that all POC and permit-issuing state agencies follow applicable federal regulations that govern the NICS so that all potential purchasers receive a consistent level of service. The CJIS APB approved audits of the POC, partial POC, and ATF Alternate Permit states. They are conducted in accordance with the NCIC Compliance Audit Policy by the FBI CJIS Audit Unit and the NICS Processing for Daily Quality (PDQ) Team.

The NICS audit ensures that a POC is in compliance with the following standards (the list is not all inclusive):

- Only authorized personnel initiate NICS checks for purposes authorized under the Brady Act.
- NICS data or systems are afforded proper security.
- POCs/permit states deny firearm sales/permits based on criteria equal to or more stringent than those imposed by federal law.  
(See Section 7.0.)
- POCs/permit states have procedures and personnel in place to make disqualification decisions, respond to the FFLs, and manage an appeal process.
- POCs/permit states always conduct a NICS check before approving a firearm transfer or issuing an ATF Alternate Permit.
- When POCs/permit states deny the purchase of a firearm based on an arrest only without a disposition, a state statute is in place authorizing this practice.
- POCs follow federal guidelines relating to the purging of proceed transaction data.
- Data submitted to the NICS Index are accurate and based on federal law.
- The status of NDN, NDO, NLN, and NPN data is accurate.
- POCs conduct IAQs on all non-U.S. citizens attempting to purchase a firearm or to obtain an alternate permit.

- The CJIS Systems Agency (CSA) sets IFFS flags correctly.
- POCs correctly follow VGTOF hit procedures.

## 2.19 SANCTIONS PROCESS

In the event of negative findings during an audit, the results are turned over to the CJIS APB Sanctions Subcommittee. The Subcommittee is empowered to initiate procedures to achieve corrective action. If the CJIS APB Sanctions Subcommittee deems that the agency's deficiencies are severe enough to merit redress, the Subcommittee shall initiate the following progressive actions:

- An initial sanction letter shall be sent from the Subcommittee to the head of the POC/permit-issuing agency, with a copy to the CJIS Systems Officer (CSO) if applicable, identifying the deficiencies found during the audit process. The letter shall direct the recipient to submit a letter to the Subcommittee outlining a course of action to correct the deficiencies. The POC/permit-issuing agency head will be afforded 30 days from the date of the sanction letter to respond to all sanction items unless the Subcommittee and/or the FBI CJIS Division requires a more expeditious response.
- If the initial response to the sanction letter is deemed insufficient by the Subcommittee or no response is received within the allotted time, a letter shall be sent to the head of the state agency that supervises the NICS program, with a copy to the POC/permit-issuing agency's head and CSO, if applicable. The letter shall request the agency head's assistance in correcting the deficiencies identified (with no threat to terminate service). A response to the Subcommittee letter is required from either the agency head or a designated representative within 10 days of the date of the letter unless the Subcommittee and/or the FBI CJIS Division requires a more expeditious response.
- If the response from the agency head is deemed insufficient by the Subcommittee, or no response is received within the allotted time, a letter placing the agency on probationary status shall be sent to the governor and/or state attorney general overseeing the state POC/permit-issuing agency. A response is required from either the governor/state attorney general or a designated representative within 20 days of the date of the letter.
- If the response to the governor/state attorney general letter is deemed insufficient by the Subcommittee or no response is received within the allotted time, service to the NICS will be terminated and all potential firearm purchases will have to come through the FBI NICS Section.

- Reinstatement of service will occur only after the agency has demonstrated that appropriate changes were made to comply with regulations.

**Note:** In the event of serious identifiable deficiencies, the CJIS APB Sanctions Subcommittee, with the concurrence of the APB Chair, could take action against a POC/permit-issuing agency to immediately discontinue NICS access. This action could include eliminating any of the above-listed steps to expedite a resolution of the deficiency. Executive managers at the CJIS Division of the FBI could also take such action in concert with the Subcommittee and the APB Chair.

## **2.20 INFORMATION SHARING PROVIDED BY THE FBI NICS SECTION**

The NICS Section provides information and assistance to the POCs/permit-issuing agencies in order to create an efficient and consistent process by which background checks are completed for the transfer of firearms. Agencies that would like to arrange an information-sharing session should contact the FBI NICS Section at (304) 625-7372.

Information is also available at the NICS Web site, which may be accessed through [www.fbi.gov](http://www.fbi.gov) and [www.leo.gov](http://www.leo.gov). In addition, the FBI NICS Section has established an e-mail address, [a\\_nics@leo.gov](mailto:a_nics@leo.gov), where NICS users can obtain prompt responses to questions and provide comments or concerns regarding NICS-related issues.

## **2.21 CHANGE IN PARTICIPATION STATUS**

The POC states are not required to perform NICS background checks by federal law but do so voluntarily or pursuant to state statute, regulation, or executive order. If a participating state becomes unable to serve as a POC, it should provide written notice to the FBI NICS Section at least 60 days in advance of terminating its POC status. This notice allows time for the FBI NICS Section to inform the ATF of the change, to enroll the state's FFLs in the NICS, and to make the necessary system and staffing adjustments. The FBI NICS Section cannot conduct NICS background checks for the FFLs in a former POC state until the following actions occur: the FFLs enroll in the NICS and both the FBI NICS Section and the FFLs put in place the resources necessary to perform the checks with minimal disruption to the ongoing operation of the system.



### 3.0 SECTION 3 – THE FEDERAL PROHIBITORS

When the POC denies a firearm purchase, the denial must be based on federal law or state law that is equal to or more stringent than those imposed by the federal prohibitors listed in this section. Sources for this information include the GCA of 1968 (18 U.S.C. Ch. 44, especially § 922 [g][1-9] and [n]), 27 C.F.R. 478.11, 61 Fed. Reg. 47095, 62 Fed. Reg. 3434, 63 Fed. Reg. 35520, and the definitions in § 921 (a)(20).

#### 3.1 18 U.S.C. § 922 (g)(1)

**Persons who have been convicted in any court of a crime punishable by imprisonment for a term exceeding one year, regardless of the sentence that was imposed. (See 18 U.S.C. § 921 [a][20].)**

- The phrase “crime punishable by imprisonment for a term exceeding one year” does not include (1) any federal or state offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices or (2) any state offense classified by the laws of the state as a misdemeanor and punishable by a term of imprisonment of two years or less.
- What constitutes a “conviction” of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction that has been expunged or set aside or for which a person has been pardoned or has had civil rights restored (i.e., the right to vote, the right to sit on a jury, and the right to hold public office) will not be considered a conviction—unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms; or unless the convicting jurisdiction does not completely restore firearm rights (e.g., the felon may possess firearms but not obtain a Carry Concealed Weapons Permit).

When reviewing a conviction that was expunged, set aside, pardoned, etc., the POC must also research applicable state law to ensure that the state recognizes the court’s action as removing firearm disabilities.

- Prohibitor 922 (g)(1) requires a conviction; however, in certain states, a law is in place that allows a POC to deny a firearm transfer based upon a “naked” arrest, i.e., an arrest that lacks final dispositional data.

**Note:** This prohibitor includes military service members charged with any offense punishable by imprisonment for a term exceeding one year if referred to a General Court-Martial, regardless of the sentence imposed—e.g., even if the

sentence is only probation or a fine, if the maximum term of imposition available under the law is in excess of one year then the prohibitor still pertains.

### 3.2 18 U.S.C. § 922 (g)(2)

#### **Persons who are fugitives from justice.**

The term "fugitives from justice" is defined as follows:

- A person who has fled from any state to avoid prosecution for a felony or a misdemeanor; or
- A person who leaves the state to avoid giving testimony in any criminal proceeding; or
- A person who knows that misdemeanor or felony charges are pending against him or her and who leaves the state of prosecution and does not appear before the prosecuting tribunal.

**Note:** The legal counsel of the DOJ, the ATF, and the FBI have agreed that a hit on any active criminal warrant involving a felony or misdemeanor criminal charge disqualifies an individual from receiving a firearm. The element of flight does not have to be determined at the time of the denial.

On appeal, denied individuals could provide evidence that they have not ever fled the state. A person is not a fugitive from justice merely because he or she has an outstanding civil traffic citation.

### 3.3 18 U.S.C. § 922 (g)(3)

#### **Persons who are unlawful users of or addicted to any controlled substance.**

This prohibitor is further defined below, as specified in the ATF Regulation 27 C.F.R. 478.11:

- A person who uses a controlled substance and has lost the power of self-control with reference to the use of the controlled substances; or
- A person who is a current user of a controlled substance in a manner other than as prescribed by a licensed physician.

**Note:** As defined in 21 U.S.C. § 802 and 21 C.F.R. Part 1308, the term "controlled substance" includes but is not limited to marijuana, depressants, stimulants, and narcotic drugs. The term "controlled substance" does not include distilled spirits, wine, malt beverages, or tobacco (as those terms are defined or used in Subtitle E of the Internal Revenue Code of 1986, as amended).

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A person may be considered an unlawful current user of a controlled substance even though the substance is not being used at the precise time the person seeks to acquire a firearm or receives or possesses a firearm. Unlawful use is not limited to the use of drugs on a particular day, or within a matter of days or weeks before receiving a firearm; rather, the unlawful use needs only to have occurred recently enough to indicate that the individual is actively engaged in such conduct.

Four examples of this prohibitor follow:

1. A person convicted for use or possession of a controlled substance within the past year.
2. A person with multiple arrests for use or possession of a controlled substance within the past five years if the most recent arrest occurred within the past year.
3. A person found through a drug test to use a controlled substance unlawfully, provided the test was administered within the past year.
4. A current or former military service member who received recent disciplinary or other administrative action based on confirmed drug use (e.g., court-martial conviction, nonjudicial punishment, or an administrative discharge based on drug use or drug rehabilitation failure).

**Note:** An individual's admission of use or possession of a controlled substance within the past year is sufficient to deny a firearm transfer under this prohibitor.

### **3.3.1 REVIEWING RECORDS TO IDENTIFY DRUG USE OR POSSESSION**

POCs should carefully review criminal histories to uncover any evidence of recent drug use or possession, which may be indirectly documented in the reports.

**Note:** In accordance with ATF Regulation 27 C.F.R. 478.11, such dispositions as probation before judgment, deferred prosecution, pretrial diversion, etc., do not qualify as convictions for unlawful drug use even if the record includes a guilty plea. Such a disposition does not constitute an adjudication of guilt. The records, however, may contain admissions of drug use or requirements for mandatory drug treatment. These should be researched for inferences of drug addiction or use.

Examples of court records that require thorough scrutiny follow:

- **Discovering a drug-related incident.**

During the research of a non-drug-related charge, a drug-related incident within the past year was discovered. Further research must be conducted.

If during the course of research it is found that drugs were present or used at the time of the incident—and if such research also shows that the individual was positively drug tested, or that the substance possessed was field tested or chemical tested—then the positive drug test has established an inference of recent use or possession. Deny the transaction based on Prohibitor 922 (g)(3).

- **Conviction for a nondrug offense.**

In certain cases, a criminal record may document a field or chemical test that establishes possession of a controlled substance within the past year, even though the individual may have been convicted of a different offense, such as disorderly conduct.

In such cases, the POC should review the records to determine whether the authorities conducted a field or chemical drug test on the individual. If the individual tested positive or was in possession of a substance that tested positive, the record documents unlawful drug use within the past year regardless of the charge. Deny the transaction.

- **Drug arrest within the past year; no conviction.**

If the arrestee tested positive for drugs or a substance in his or her possession tested positive, an inference of current or recent unlawful drug use can be established. Deny the transaction.

**Note:** If the results of the drug test are not available, the test cannot be used to deny a firearm transfer. Obtain the records of the drug test, and deny the transaction.

- **Drug charges that are dismissed.**

The criminal history record shows that a drug or DUI charge has been dismissed. This record cannot be used or considered when establishing a pattern of unlawful drug use or possession.

However, if the drug charge does not have a disposition on the criminal history record then research is required. A positive drug test will establish an inference of recent use or possession if during the course of research the following two criteria are concurrently found: the charge was dismissed and the individual was positively drug tested or the substance possessed was field or chemical tested. Deny the transaction.

- **Recent drug arrests that do not fall within the past year.**

If the arrest resulted in a conviction and the date of the conviction falls within the past year, deny the transaction.

- **An arrest within the past year for possession of drug paraphernalia.**

Possession of drug paraphernalia does not disqualify an individual from purchasing a firearm unless residue on the paraphernalia is subjected to a field or chemical test with a positive result.

- **Multiple drug arrests during the past five years with the most recent occurring within the past year.**

Review the arrests to ensure that none were dismissed. Dismissed charges cannot be used to establish a pattern of unlawful drug use or possession.

- **Records indicating active probation.**

POCs must research conditions of active probation regardless of the associated offense in order to verify that the individual has not tested positive for drug use within the past year. If he or she has been tested positive, deny the transaction.

- **Driving under the influence (DUI).**

Many DUI statutes include driving under the influence of drugs. If the charge is "DUI alcohol" then no further research is needed for this prohibitor.

However, if the charge does not specify drugs or alcohol on the criminal history record then further research is needed to find if drugs were involved at the time of the arrest.

- **Arrests that may involve prescription drug abuse.**

If used in a manner other than prescribed by a licensed physician, prescription drug abuse may disqualify an individual from purchasing or receiving a firearm. Instances of this type of misuse are overdosing on the medication, combining the medication with alcohol use, using medication prescribed for another person, obtaining the medication through fraud or forgery, etc.

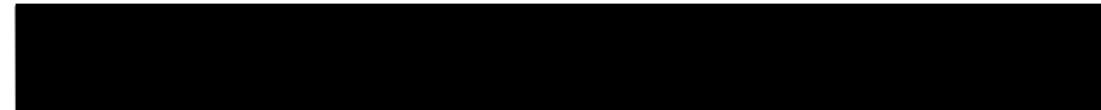
When reviewing criminal records, POCs should be alert to charges that may involve abuse of prescription medications, such as fraud, forgery, and DUI.

- **Arrests involving a controlled substance found in/on an individual's property.**

If an individual is arrested along with other persons because law enforcement discovers a controlled substance in his/her vehicle, home, or curtilage, the investigation must establish that the controlled substance was actually the property of the arrestee (or the individual must admit ownership) in order for the incident to qualify as a prohibitor. (Curtilage includes outbuildings connected to the home and the land or grounds surrounding it.)

### **3.3.2 CHARGES THAT DO NOT DISQUALIFY AN INDIVIDUAL FROM BUYING OR RECEIVING A FIREARM UNDER FEDERAL LAW.**

- A charge involving only the possession of materials used to produce a controlled substance does not qualify as a federal prohibitor. Law enforcement investigation must discover the actual end product, or the subject must have admitted to manufacturing the substance (e.g., methamphetamine) in order for the charge to disqualify the individual from purchasing a firearm. This does not eliminate the possibility of a state prohibitor for these types of offenses.
- A charge of "attempt" or "conspiracy" to possess a drug or a controlled substance generally is not sufficient to disqualify an individual from purchasing or receiving a firearm, but the charge can be used to establish inference of current use or possession.



### **3.4 18 U.S.C. § 922 (g)(4)**

#### **Persons who have been adjudicated as mental defectives or have been committed to any mental institution.**

This prohibitor does not include a person in a mental institution for observation, evaluation, or a voluntary admission to a mental institution.

"Mental institution" includes mental health facilities, mental hospitals, sanitariums, psychiatric facilities, and other facilities that provide diagnoses by licensed

professionals of mental retardation or mental illness, including a psychiatric ward in a general hospital.

Four examples of this prohibitor follow:

1. A person found—as a result of marked subnormal intelligence, mental illness, incompetency, condition, or disease—by a court, board, commission, or other lawful authority to be (a) a danger to himself or others or (b) lacking the mental capacity to contract or manage his own affairs.
2. A person found to be insane by a court in a criminal case. POCs must carefully review criminal history records to identify insanity pleas. Terms used to describe this condition include but are not limited to: By Reason of Insanity (BRI); Not Responsible Due to Incompetence or Insanity; Found Not Guilty by Reason of Insanity; and Incompetent to Stand Trial.
3. A person found incompetent to stand trial or found not guilty by reason of lack of mental responsibility (pursuant to Articles 50a and 76b of the Uniform Code of Military Justice, 10 U.S.C. § 850a, § 876b).
4. A person formally committed to a mental institution by a court, board, commission, or other lawful authority (including a commitment involuntarily; a commitment for other reasons, such as for mental defectiveness or mental illness; or a commitment for drug use).

**Note:** To apply this prohibitor, the POC must secure documentation concerning the involuntary commitment from the doctor, facility, or court. It is not necessary for the POC to review the individual's medical records.

**Note:** This prohibition is not removed by a restoration to competency on "cure." Only an ATF Relief of Disability will restore firearm rights that were lost due to this prohibition.

### 3.5 18 U.S.C. § 922 (g)(5)

**Persons who are aliens and are illegally or unlawfully in the United States and nonimmigrants who fail to meet exception on (y)(2).**

This prohibitor includes the following:

- An alien who unlawfully entered the United States without inspection and authorization by an immigration officer and has not been paroled into the United States under § 212(d)(5) of the Immigration and Nationality Act (INA).
- An alien who is a nonimmigrant and whose authorized period of stay has

expired or who has violated the terms of the nonimmigrant category of admission (e.g., student not maintaining student status).

- An alien who was paroled under INA § 212 (d)(5) and whose authorized period of parole has expired or whose parole status has been terminated.
- An alien who is under an order of deportation, exclusion, or removal or who is under an order to depart the United States voluntarily (whether or not having already left the United States).
- An alien who is an applicant for political asylum.

**ALL nonimmigrants are prohibited UNLESS they meet one of the exceptions.**

**Note:** For information about persons who are legal aliens in the United States having a nonimmigrant status, see Section 5.0.

### **3.6 18 U.S.C. § 922 (g)(6)**

**Persons who have been discharged from the U.S. Armed Forces under dishonorable conditions.**

This prohibitor includes only separations resulting from dishonorable discharges or dismissals; a discharge for bad conduct, for example, is not included.

“Dishonorable conditions” are defined as separation from the U.S. Armed Forces resulting from either of the following:

- A dishonorable discharge.
- A dismissal adjudged by a general court-martial.

Section 6.0 contains information to assist POCs in interpreting military charges.

### **3.7 18 U.S.C. § 922 (g)(7)**

**Persons who, having been citizens of the United States, have renounced their U.S. citizenship under certain circumstances.**

This prohibitor applies to persons who have officially renounced their U.S. citizenship under one of the following circumstances:

- Before a diplomatic or consular officer of the United States in a foreign state [pursuant to 8 U.S.C. 1481(a)(5)].

- Before an officer designated by the Attorney General when the United States is in a state of war [pursuant to 8 U.S.C. 1481(a)(6)].

The U.S. Department of State is the only agency authorized to enter information on citizen renunciants into the NICS Index.

**Note:** This category does not include any renunciation of citizenship that has been reversed as a result of administrative or judicial appeal.

### 3.8 18 U.S.C. § 922 (g)(8)

**Persons subject to a court order that restrains them from harassing, stalking, or threatening an intimate partner or child of such intimate partner, or from engaging in other conduct that would place the partner or child in reasonable fear of bodily injury.**

This category pertains to a person who is subject to a court order that meets all of the following three conditions:

1. Restrains the person from harassing, stalking, or threatening an intimate partner (e.g., spouse) or child of such person, or from engaging in other conduct that would place the partner or child in reasonable fear of bodily injury; and
2. Was issued after a hearing of which “actual notice” was given to the person and at which the person had an opportunity to participate; and
3. Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child that would reasonably be expected to cause bodily injury; or by its terms explicitly prohibits the use, or threatened use, of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.

“Actual notice” includes but is not limited to service of process personally served on the party and service by mail; proof that notice was left at the party’s dwelling house or usual place of abode with some person of suitable age and discretion residing therein; or proof that the party signed a return receipt for a hearing notice that had been mailed to the party. It does not include notice published in a newspaper.

### 3.9 18 U.S.C. § 922 (g)(9)

**Persons convicted in any court of a misdemeanor crime of domestic violence.**

This category pertains to a person convicted of a local, state, or federal offense that meets all of the following three criteria:

1. Is a misdemeanor under federal or state law or, in states that do not classify offenses as misdemeanors, is an offense that is punishable by imprisonment for a term of one year or less, and includes offenses that are punishable only by a fine (whether or not the state statute specifically defines the offense as a "misdemeanor" or as a "misdemeanor crime of domestic violence"); and
2. Involves the use or attempted use of physical force (e.g., assault or battery) or the threatened use of a deadly weapon; and
3. Was committed by a current or former spouse, parent, or guardian of the victim; by a person with whom the victim shares a child in common; by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian (e.g., the equivalent of a "common law" marriage even if such relationship is not recognized under the law), or a person similarly situated to a spouse, parent, or guardian of the victim (e.g., two persons who are residing at the same location in an intimate relationship with the intent to make that place their home).

**Note:** POCs must research any charge that could be classified as domestic violence, including assault, battery, sexual abuse, criminal mischief, disorderly conduct, menacing, etc.

Further, a person shall be considered to have been convicted of a misdemeanor crime of domestic violence only if all of the following three conditions are met:

1. The person is considered to have been convicted by the jurisdiction in which the proceedings were held; and
2. The person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and
3. In the case of a prosecution for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either
  - The case was tried by a jury, or
  - The person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea, or otherwise.

A person is not considered to have been convicted of a misdemeanor crime of domestic violence if:

- The conviction has been expunged or set aside; or
- The person has been pardoned for the offense; or
- The person had civil rights restored (where the law of the jurisdiction in which the proceedings were held provides for the loss of civil rights for such an offense); and
- The person is not otherwise prohibited by the law of the jurisdiction in which the proceedings where held from receiving or possessing any firearms.

The only exceptions to the four circumstances listed above are as follows:

- The pardon, expunction, set aside, or restoration of civil rights expressly provides that the individual may not ship, transport, possess, or receive firearms; or
- The law of the jurisdiction in which the proceedings were held restricts firearm rights (e.g., a person may possess a firearm but may not obtain a concealed weapons permit).

### 3.10 18 U.S.C. § 922 (n)

#### **Persons who are under indictment for a crime punishable by imprisonment for a term exceeding one year.**

This category pertains to persons under indictment or “information” in any court, including a foreign court, under which a crime punishable by imprisonment for a term exceeding one year may be prosecuted. This is the only federal prohibitor that allows individuals to retain the weapons that they possessed prior to the indictment.

An “information” is a formal accusation of a crime, which differs from an “indictment” because it is made by a prosecuting attorney rather than by a grand jury. The definition of indictment would not include merely a criminal complaint.

**Note:** The terms Under Indictment or Under Information rarely appear on criminal history records. POCs should research felony charges that do not show a disposition (naked arrests) to determine whether the subject may be under an indictment or information.

The phrase "crime punishable by imprisonment for a term exceeding one year" does not include (1) any federal or state offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices or (2) any state offense classified by the laws of the state as a misdemeanor and punishable by a term of imprisonment of two years or less.

### **3.10.1 OFFICIAL USE EXCEPTION – 18 U.S.C. § 925 (a)(1)**

An individual who is subject to a federal firearms prohibition under Section 922 (g) (1-8) and (n) is not—when on official duty—prohibited by federal law to possess an official weapon from a government entity. However, the individual is still subject to state law.

This exception does not apply to Section 922 (g)(9). If an officer is convicted of a misdemeanor crime of domestic violence, he or she is prohibited from possessing a firearm or ammunition at any time.

### **3.11 RESEARCH CONTACTS FOR POCs**

The FBI NICS Section makes available to POCs the *Disposition Reporting Point of Contact Index*, a list of agencies in all 50 states and territories, along with several federal agencies who can supply disposition information. The Index is updated quarterly. The FBI NICS Section can also assist with the appropriate military contact for information about military arrests.

To request assistance with disposition research or to obtain a copy of the *Disposition Reporting Point of Contact Index*, contact the State Liaison Specialist at (304) 625-7361.

## 4.0 SECTION 4 – PROCESSING NICS BACKGROUND CHECKS

### 4.1 SEARCH PROCEDURES

To initiate a NICS background check, a buyer completes and signs the ATF Form 4473 (or a designated state form) at the FFL's place of business. A completed form contains information on the name, sex, race, date of birth, state of residence, and citizenship status of the buyer. The FFL must verify the information on the form by checking it against a valid form of government-issued identification that includes a photograph of the buyer. The FFL must then contact the designated state POC and provide the information from the form, including the reported citizenship of the prospective buyer.

**Note:** The POC must obtain and confirm the citizenship status of the buyer. If the applicant is not a citizen of the United States, the POC must take the appropriate steps described in Section 5.0.

The POC conducts the initial background check by accessing the NICS. The System assigns an NTN for the transaction and conducts a computerized search that compares the descriptive data from the ATF Form 4473 with the descriptive data contained in the NCIC, the III, and the NICS Index. (The NICS automatically assigns an NTN to each transaction regardless of the final status or type of check conducted.) If the search does not hit on a record in any of the three databases, no records will be returned by the NICS.

If the NICS does return a record(s), the POC must review the response to determine if the subject of the record is a valid match to the applicant. If so, the POC must review all arrest charges, dispositions, and other records and conduct research sufficient to determine if any part of the record disqualifies the individual from receiving a firearm under federal or state law (i.e., the laws of the state in which the individual resides and the state in which he or she is attempting the gun purchase).

On occasion, the final settlement of a criminal case will not be noted in the subject's record. In such cases, the POC must conduct research necessary to obtain one of the following: (1) final disposition, (2) indictment, or (3) information.

**Note:** 18 U.S.C. § 922 (g)(1) and (g)(9) require a final disposition of conviction.

Prior to contacting a law enforcement agency to request additional information, the POC should search the arrest data through all available automated systems. If the final resolution is not on record in any other source, the POC contacts the arresting agency and provides the subject's FBI Number or State Identification Number, name, date of birth, date of arrest, charge, and the arrest number.

Any new information obtained from the research should be forwarded to the state repository or the CJIS Division of the FBI so that applicable records can be updated. If the POC ultimately denies the transaction based on federally disqualifying information that is not in one of the three databases searched by the NICS, the POC should enter the information into the NICS Index.

**Note:** Some states have a single agency that processes arrest records, e.g., a state identification bureau. If an arrest occurs in such a state, the POC must submit new information to the state identification bureau before the FBI can update the III. (If the state does not have a state identification bureau, the POC submits new information directly to the CJIS Division.)

If a POC contacts an agency to request information, and the agency does not respond within 3 business days or is unable locate the information requested, the transaction will remain in a delay status unless the POC uncovers other disqualifying information.

The information in this section outlines the POCs' proper responses when a NICS query generates a hit in one of the three databases searched.

## 4.2 NCIC

The NCIC is a nationwide, computerized information system established as a service to all criminal justice agencies—local, state, and federal. It contains documented information on crimes and criminals collected by the criminal justice community and compiled in one database to assist law enforcement agencies in the performance of their legally authorized functions.

The following sections describe the procedures a POC agency should follow when it receives valid hits in the NCIC database.

### 4.2.1 FOREIGN FUGITIVE FILE (FFF)

The FFF contains information on persons who are wanted around the world. A hit on this file generates a message to U.S. law enforcement officers to use appropriate caution when confronting the subject of the record. Any agency that hits on a foreign fugitive record receives a message stating that the fugitive cannot be arrested based solely upon the FFF record. The message further advises the agency to contact the U.S. National Central Bureau/International Criminal Police Organization (INTERPOL). A denial cannot be based on this record.

**Note:** The INTERPOL was created to enhance cooperation among police in different countries. In each participating country, an agency known as the National Central Bureau coordinates and facilitates requests between foreign police and the national law enforcement agencies.

#### 4.2.1.1 CANADIAN RECORDS

A POC that hits on a Canadian entry is advised in a caveat that the subject of the record is wanted on a Canadian warrant and that no arrest can be executed in the United States based solely on the Canadian warrant. In addition, the caveat directs the inquiring agency to contact the Royal Canadian Mounted Police (RCMP) to initiate the process of obtaining a U.S. extradition warrant. A denial cannot be based on this record for a foreign arrest.

#### 4.2.1.2 VALID FFF HIT

It is extremely important that the POC thoroughly review all available records when determining a match. If research concludes that the individual attempting the firearm purchase is a valid match to an FFF record, the POC should proceed with the following steps:

1. Contact the FFL to obtain the buyer's address.
  2. Contact INTERPOL via the International Justice and Public Safety Information Sharing Network (Nlets) at ORI DCINTER00 or contact the RCMP at (613) 998-6199 and advise of a possible match.
  3. Using the FFF notice, provide INTERPOL or the RCMP with your ORI (spell out the city and country along with the number) and the buyer's name, DOB, sex, NCIC Identification Code (NIC), etc.
  4. Check for any federal arrest warrants or whether the subject is an alien who is in the United States illegally or is a nonimmigrant without an exception.
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#### 4.2.2 IMMIGRATION VIOLATOR FILE

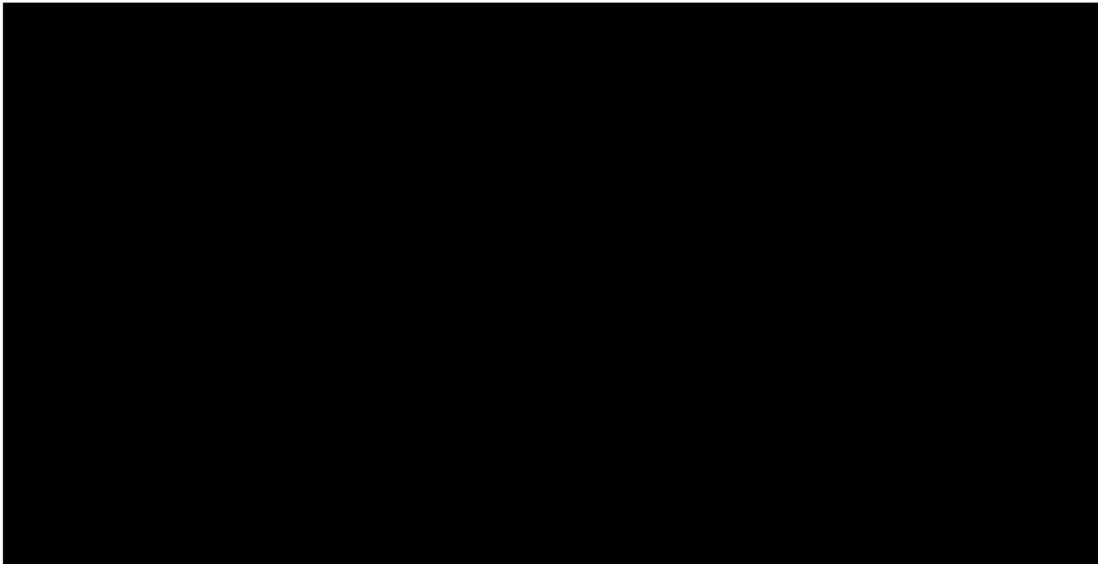
The Immigration Violator File contains three categories of records: Deported Felon (DFF), Absconder, and NSEERS. The DFF category contains records on convicted criminal aliens who have been deported for drug trafficking, firearms trafficking, or serious violent crimes. The Absconder category contains records on individuals who have unlawfully remained in this country despite outstanding administrative warrants of removal from the United States. The NSEERS category contains records on individuals who are subject to monitoring for

national security or law enforcement interest while in the United States. All of the records in this NCIC file support the efforts of the ICE.

Each record response to a hit on the Immigration Violator File includes caveats preceding and following the record, a unique message key translation, a special Offense Field (OFF) code translation, and an NIC that begins with "N." In addition, a criminal history record, via the III, may be returned in response.

#### **4.2.2.1 VALID IMMIGRATION VIOLATOR FILE HIT**

If research determines that the individual attempting the firearm purchase is a valid match to a record in the Immigration Violator File, one of the following two responses will be appropriate for the POC:



#### **4.2.3 PROTECTION ORDER FILE**

The Protection Order File contains injunctions or any other court orders issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with, or physical proximity to another person. This File contains temporary and final orders issued by civil or criminal courts.

Amendments to the GCA make it unlawful for any person who is subject to a court order that meets certain criteria in regard to protection orders to ship, transport, possess, or receive a firearm or ammunition. Individual states

determine whether a protection order qualifies for a Brady Indicator (BRD) in the NCIC record. A BRD prohibits the subject of the record from receiving or possessing a firearm. The Brady Indicators are:

N – No BRD, which means that the protection order does not subject the individual to federal firearm prohibitions under 18 U.S.C. § 922 (g)(8).

Y – Yes BRD, which means federal criteria prevent the subject from purchasing, possessing, or receiving a firearm.

U – Unknown, which means it is unknown if federal criteria exist that prevent the purchase, possession, or receiving of a firearm.

**Note:** Contact the originating agency on all matches to protection orders to confirm the validity of the BRD in the Protection Order File.

#### **4.2.3.1 QUALIFYING PROTECTION ORDER UNDER FEDERAL LAW**

In order to disqualify a person from purchasing a firearm under the federal firearms prohibition, 18 U.S.C. § 922 (g)(8), the following three conditions must all be met:

1. The protection order must have been issued after a hearing of which the defendant/respondent received actual notice and had an opportunity to participate.
  - Ex parte or temporary orders do not involve a hearing; therefore, these types of orders generally do not disqualify a subject from purchasing a firearm.

**Note:** If a court orders the continuance of an ex parte order at the request of the respondent (or with the respondent's agreement), this constitutes a hearing. In this case, the order may satisfy the requirements of the prohibition if other conditions are also met.

- Actual notice includes, but is not limited to, service of process or service by mail, proof that notice was left with some person of suitable age, or proof that the party signed a return receipt. It does not include notice published in a newspaper.
- Opportunity to participate does not mean that the person had to be present at the hearing. The law requires only that the defendant/respondent had the opportunity to attend the hearing and participate. The hearing does not need to be formal or on the record. Mutual and Consent Orders signed by the judge in his or her chambers meet the definition of a hearing.

2. The order must restrain the defendant/respondent from harassing, stalking, or threatening an intimate partner or child of an intimate partner or child of the respondent, **or** engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child.
  - An “intimate partner” is defined as a spouse or former spouse of the defendant/respondent, a parent of a child of the defendant/respondent, or an individual who cohabitates or has cohabitated with the defendant/respondent. (Cohabitation is equivalent to common law marriage even if the state’s law does not recognize such a union.)
3. The order must include a finding that the subject represents a credible threat to the physical safety of the intimate partner or child; **or** by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child.

#### **4.2.3.2 VALID PROTECTION ORDER HIT**

If a hit on the Protection Order File proves to be a valid match, the POC should follow the procedures below:

1. Contact the originating agency to confirm that the protection order is still active and to confirm the presence of federal criteria. Request a copy of the original court order. *Do not rely upon the BRD.* Regardless of the BRD, call the issuing agency on ALL protection orders. Do not rely on a message that may appear as a header on an NCIC Protection Order stating: “The subject may be prohibited from receiving or possessing a firearm under federal law.”
2. Determine whether federal prohibitors disqualify a person from possessing a firearm. Refer to Section 4.2.3.1 above and review the conditions. In considering conditions 2 and 3, be certain that at least one of the two elements described in each criterion are present.

The Protection Order Conditions (PCO) Field in the NCIC File may indicate that the individual is prohibited by the issuing state from purchasing and possessing firearms. A completed PCO Field can be used as a basis for a denial.

#### **4.2.3.3 JUDICIAL STATEMENTS IN PROTECTION ORDERS**

In analyzing court orders, remember that a state judge is allowed only to apply and enforce state law for a protection order proceeding. A state judge may not

overrule federal law. Even though a state judge orders that a respondent may have firearms, federal law will prohibit the respondent from possessing any firearms if the protection order meets federal criteria. In those situations where federal law does not apply, a state judge may apply state law to restrict firearm possession.

At times, a judge may expressly state in a protection order that the defendant/respondent may have a gun. However, federal law supersedes such statements. If individuals meet the federal criteria, they are prohibited from having a gun regardless of a judge's determination under state law.

If a judge includes a statement in the protection order that the subject may not have a gun but federal prohibitors do not disqualify a defendant/respondent from gun ownership, the judge's statement stands as a state prohibitor. State prohibitors can form the basis for denials, and POCs should enforce them across state lines under the Full Faith and Credit provision of the federal Violations Against Women Act.

#### **4.2.3.4 FULL FAITH AND CREDIT PROVISION**

Full Faith and Credit enforcement of protection orders must occur across state lines; that is, states, POCs, and the FBI NICS are required to enforce protection orders issued in another state, tribe, or territory as if they were issued in their own.

Full Faith and Credit under Title 18 U.S.C. § 2265 provides that a protection order issued in one state, tribe, or territory is enforceable in any state as long as the order was issued by a state or tribal court and (1) such court had jurisdiction over the parties and matter under the law of such state or Indian tribe; and (2) reasonable notice and opportunity to be heard was given to the person against whom the order was sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within a reasonable time after the order was issued, sufficient to protect the respondent's right to due process.

#### **4.2.4 WANTED PERSON FILE**

The Wanted Person File contains records for individuals who are the subject of a federal warrant, felony warrant, or serious misdemeanor warrant. The File contains both domestic and foreign warrants. Under 18 U.S.C. § 922 (g)(2), foreign warrants cannot be used to base a denial. The POC must check to see if the subject is an alien and apply the related prohibitor as defined in 18 U.S.C. § 922 (g)(5). (For a discussion of background checks for non-U.S. citizens, see Section 5.0.)

#### 4.2.4.1 VALID WANTED PERSON HIT



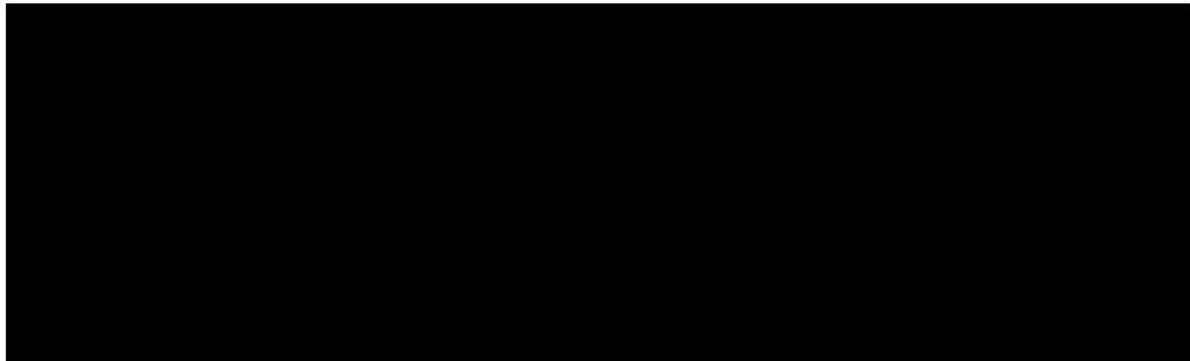
**Note:** Not all warrants disqualify an individual from gun ownership. Only warrants involving a misdemeanor or felony criminal charge merit disqualification. A warrant is not disqualifying if the charge is a civil violation for which the result is merely an appearance to pay a fine.



#### 4.2.5 USSS PROTECTIVE FILE

The USSS Protective File contains records on individuals who may pose a threat to the President or others afforded protection by the USSS.

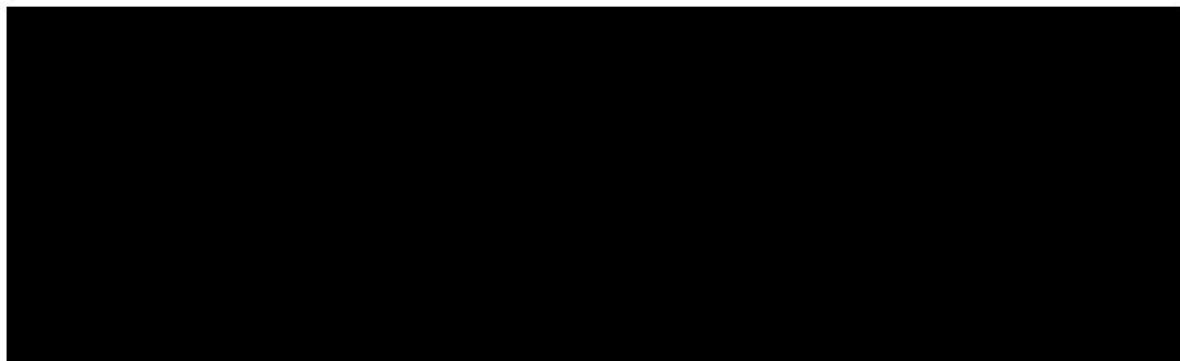
When a NICS response contains a USSS Protective File Record, the USSS will contact the agency generating the NICS inquiry. The POC should comply with any request for information and ask if any prohibitive information exists.

**4.2.5.1 VALID USSS PROTECTIVE FILE HIT****4.2.6 SENTRY FILE**

The Sentry File contains records on individuals who are or have been incarcerated by the U.S. Bureau of Prisons. (This File is currently being tested and has not yet been populated.) A hit on this file is not in itself a prohibitor. It indicates that further research is needed, which may lead to the discovery of disqualifying information.

**4.2.7 CONVICTED PERSON ON SUPERVISED RELEASE FILE**

The Convicted Person on Supervised Release File contains records of subjects who are free under specific restrictions during a probation, parole, or supervised release sentence following imprisonment. Supervised release is not, in itself, a prohibitor. However, a hit on this file may lead to the discovery of disqualifying information.

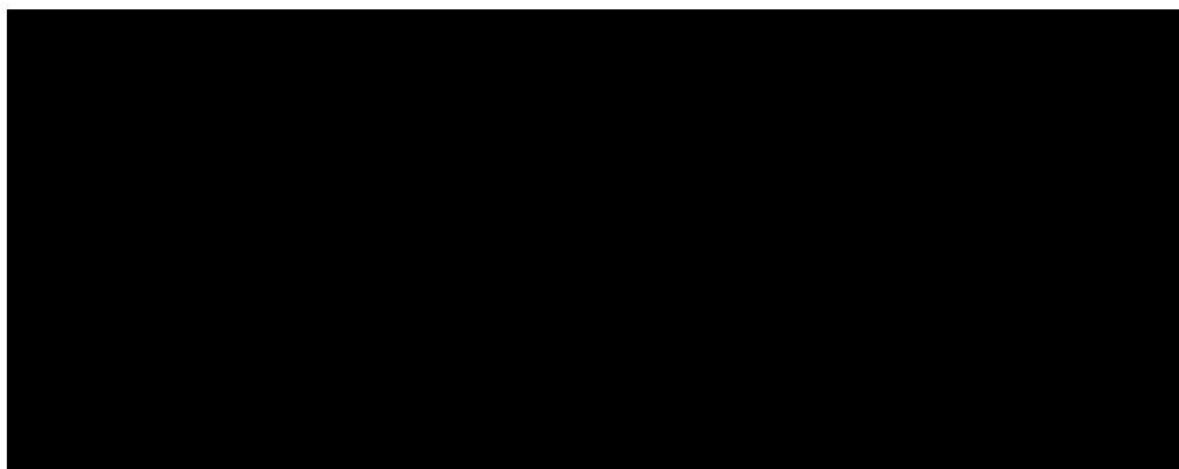
**4.2.7.1 VALID HIT ON THE CONVICTED PERSON ON SUPERVISED RELEASE FILE**



#### **4.2.8 CONVICTED SEXUAL OFFENDER REGISTRY**

The Convicted Sexual Offender Registry contains records on individuals who have been convicted of a criminal offense against a minor, have been convicted of a sexually violent offense, or have been determined to be sexually violent predators. Registration as a sexual offender is not, in itself, a prohibitor. However, a hit on this file may lead to discovery of disqualifying information, such as a misdemeanor crime of domestic violence, protection order, or a felony conviction.

##### **4.2.8.1 VALID CONVICTED SEXUAL OFFENDER REGISTRY HIT**



#### **4.2.9 VIOLENT GANG AND TERRORIST ORGANIZATION FILE (VGTOF)**

The VGTOF was designed to provide law enforcement personnel with the means to exchange information on members of violent criminal gangs and terrorist organizations. The VGTOF information is exclusively for the use of criminal justice agencies, and it is based, in part, on investigative information not previously subject to independent judicial review. Strict adherence to policy on the security, use, and dissemination of information contained in this file is necessary. The POC will adhere to the policy of not providing any record information contained in this file to the FFL or the buyer.

The POC will identify VGTOF records by the following message key:

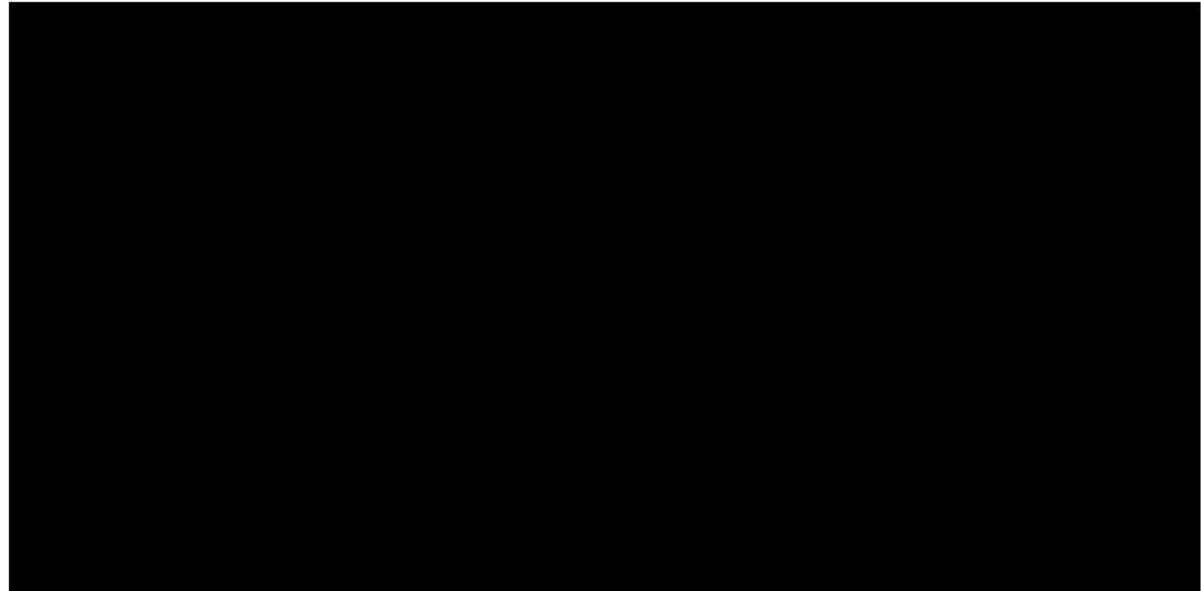
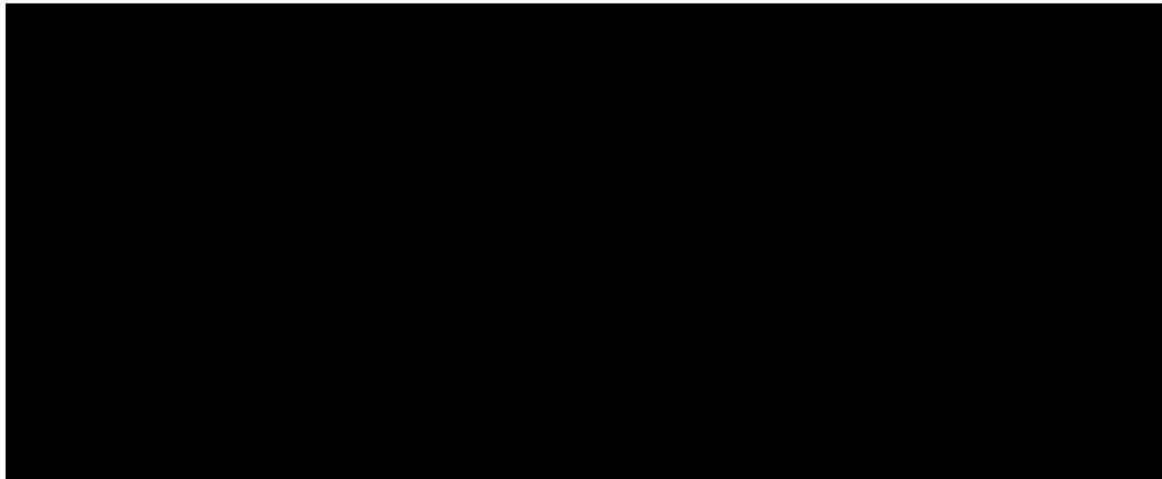
“SPECIAL”

#### 4.2.9.1 VGTOF HIT

The only banner that will be present when a NICS response contains a VGTOF hit is the message listed below (no identifying information regarding the subject of the hit will be displayed):

MKE/ SPECIAL

DO NOT PROCEED WITH THIS TRANSACTION UNTIL CONTACTED  
BY THE FBI NICS SECTION



#### 4.2.9.2 VGTOF APPEALS



#### **4.3 INTERSTATE IDENTIFICATION INDEX (III)**

All transactions with a valid match in the III require a careful review of the subject's criminal history record. The POC must determine whether any of the individual's arrests and/or convictions prohibit the subject from purchasing or possessing a firearm.

Unless state law disqualifies an individual from purchasing or possessing a firearm based solely upon an arrest (without a court disposition), the POC should research the disposition for every felony or disqualifying misdemeanor charge in the record to determine whether federal criteria are met.

##### **4.3.1 FLASH NOTICES**

A rap sheet may also contain warrant information or probation and/or parole disposition details known as "flash" notices. The FBI posts flash notices in III records in response to requests from county, state, and federal probation and parole authorities; correctional institutions; pretrial diversion coordinators; and other criminal justice agencies. The purpose of flash notices is to facilitate communication between interested authorities in the event that the subject of the record is arrested.

Disposition information in the III record may be the only indicator that the subject of the record is on probation or parole. A flash notice provides information regarding the subject's probation or parole office. If the record contains a flash notice, the POC should review the Supervisory and/or the Custody Fields, which provide an ORI number for the supervisory authority.

###### **4.3.1.1 VALID FLASH NOTICE HIT**

If the flash notice hit is valid, the POC should follow the procedures outlined below:

1. If the record contains disqualifying data, deny the transaction. Contact the supervisory authority identified in the flash notice. Relay all available information pertaining to the buyer and advise the supervisory authority that the buyer and the subject of the flash notice may be identical.

2. If the record does not contain data that clearly disqualify the buyer under state or federal law, call the supervisory authority to discuss the provisions of the individual's supervision in regard to firearm ownership. Base the final decision on information provided by the supervisory authority.

#### **4.3.2 MANUAL RECORDS**

On occasion, a record request results in the following message: "... subject record will be automated as a result of your request." This message indicates that a paper record is on file but that the FBI has not yet entered the information into the automated database.

##### **4.3.2.1 MANUAL RECORD RESPONSE**

FBI staff convert manual records daily in response to hits. Usually, a manual record is available electronically within 2 business days following a hit. For assistance or questions concerning manual records, POCs should contact the NICS Systems Liaison Analyst at (304) 625-7360. While awaiting the FBI's response, POCs should take the following steps:

1. Review any other available records to determine whether they contain disqualifying data. If so, deny the transaction based on that information.
2. If research does not uncover a state or federal prohibitor, maintain the transaction in a delay status and await conversion of the manual record.
3. Upon receiving a response from the FBI, review the newly automated record to determine whether it contains information that prohibits the individual from purchasing a firearm. If so, deny the transaction. If the record contains no disqualifying information, allow the transaction to proceed.

**Note:** If a manual record has been expunged, destroyed, deleted, or purged, the system responds with the appropriate message.

#### **4.3.3 III FLAGS**

As a result of Congressional actions in the Anti-Drug Abuse Act of 1988 (P.L. 100-690), the FBI developed a system for flagging III for the "immediate and accurate" identification of convicted felons who attempt to purchase firearms. The flagging of criminal records by state identification bureaus and/or state repositories facilitates prompt resolution of pending firearm purchases.

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Therefore, the FBI continues to advise states of the importance of the flagging system and to encourage their participation in the IFFS Program.

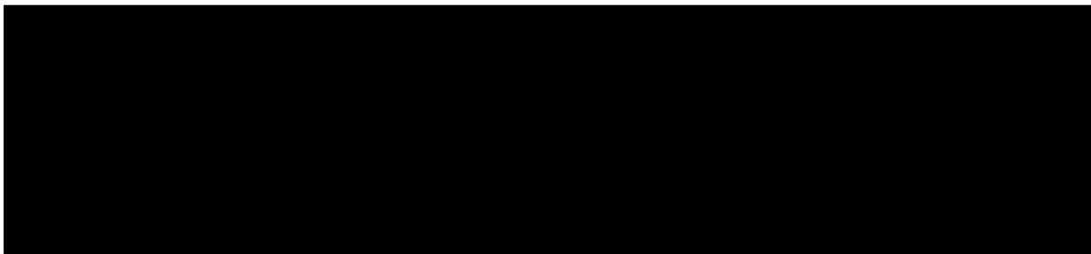
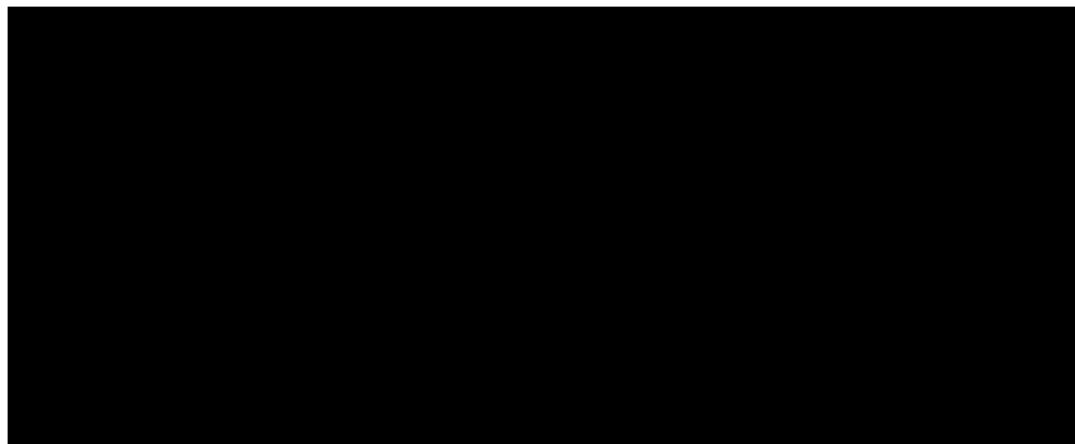
#### **4.3.3.1 THE FELON IDENTIFICATION IN FIREARMS SALES (FIFS)**

The FIFS Program began in December 1992. Over the years, the FBI worked diligently with states participating in the III to encourage participation in the felony flag program. These flags are based on federal prohibitors, not on state prohibitors.

In September 1996, the President signed into law the Omnibus Consolidated Appropriations Act, which included the Lautenberg Amendment. The Amendment broadened the ban on the transfer or possession of a firearm to any individual who has been convicted of a misdemeanor crime of domestic violence.

#### **4.3.4 IDENTIFICATION FOR FIREARMS SALES (IFFS) PROGRAM**

With the passage of the Lautenberg Amendment, the FBI made modifications to the FIFS program that were specifically designed to flag convictions and applicable record information contained in the III that qualify as firearm prohibitions under the Brady Act. The FBI renamed it the IFFS Program and revised the felony categories to accept unique flags. Currently, the following three types of records require an IFFS flag:



When an IFFS flag in a III record indicates that the subject of the record is disqualified from receiving a firearm, the transaction must be denied immediately upon determination that the subject of the record and the firearm purchaser are one and the same.

When a record contains an IFFS flag, the POCs should follow the procedures below:

1. Request the record and review it for flash and/or warrant information. If the record does not contain a flash or warrant information, deny the transaction based on the IFFS flag.
2. If the record contains flash or warrant information, follow the procedures for handling flashes and warrants outlined in Section 4.3.1.1 and then deny the transaction.
3. If an IFFS flag in a III response does not clearly disqualify the subject from purchasing a firearm, request the record and research it for additional state and/or federal prohibitive criteria. In determining eligibility, take into consideration the firearm prohibitors in the transferee's state of residence and in the state of purchase.

#### **4.4 NICS INDEX**

The NICS Index was created solely for use by the NICS and contains records obtained from local, state, and federal agencies concerning persons who are disqualified under federal law from receiving a firearm but whose records may not be accessible through the NCIC files or the III.

The NICS Index contains the following categories of persons who are disqualified from receiving a firearm:

- Dishonorable Dischargees
- Citizen Renunciants
- Abusers of Controlled Substances
- Mental Defectives/Commitments
- Illegal/Unlawful Aliens
- Denied Persons

**All records in the NICS Index are federally disqualifying records. They prohibit the sale or transfer of a firearm. No research is required.**

##### **4.4.1 SUBMITTING INFORMATION TO THE NICS INDEX**

The NICS Index is a critical component of the NICS. But as with any database, it is only as effective as the information it contains. The FBI must rely on local,

state, and federal agencies to voluntarily supply their prohibiting records to the NICS Index.

The U.S. Department of Defense submits records concerning persons dishonorably discharged from the armed forces, and the U.S. Department of State contributes records of persons who renounce their U.S. citizenship. Local, state, and federal agencies are authorized to submit information for inclusion in all other categories in the NICS Index.

To enter a record in the NICS Index category, the entering agency performs the following steps:

1. Research and validate the information to ensure that the subject meets criteria for inclusion in the File. Any record placed in the NICS Index remains the responsibility of the entering agency.
2. Ensure that the record contains, at a minimum, a NICS record identifier; an agency record identifier; the associated data source; the prohibited category; the originating agency identifier; the name and sex of the subject; and at least one numeric identifier for the subject, e.g., date of birth, social security number, or miscellaneous identification number. Enter all available information.
3. Note and include any expiration date attached to the record. Temporary protection orders, for example, include an expiration date.

#### **4.4.2 ENTERING RECORDS ON ABUSERS OF CONTROLLED SUBSTANCES**

Local, state, and federal agencies have the authority to enter and update records on persons who are unlawful users of or addicted to any controlled substance.

**Note:** For a discussion of the terms and definitions that apply to this type of entry, see Section 3.3 (Prohibitor 922 [g] [3]: Persons who are unlawful users of or addicted to any controlled substance).

The entering agency must use the Prohibited Category (PCA) code C when entering a record containing information on a person who has been an unlawful user of or addicted to a controlled substance. Such records remain on file until the record's expiration date is reached or until it is canceled by the entering agency. Inclusion of an expiration date in a NICS Index record pertaining to substance abuse is mandatory. The expiration date should be one year from the conviction date or one year from the date of a failed drug test that occurred within the past year or, in the case of multiple arrests, one year from the date of the most recent arrest.

**4.4.3 ENTERING RECORDS ON MENTALLY DEFECTIVE OR INVOLUNTARILY COMMITTED PERSONS**

The Department of Veterans Affairs; the Department of Defense; and local, state, and federal agencies are authorized to enter and update records on persons who have been adjudicated as defectives or committed to any mental institution.

**Note:** For a discussion of terms and definitions that apply to this type of entry, see Section 3.4 (Prohibitor 922 [g] [4]: Persons who have been adjudicated as mental defectives or committed to any mental institution).

The entering agency must use the Prohibited Category (PCA) code D when entering a record containing information on a person who meets the criteria for this category. This type of record remains on file indefinitely unless the record is canceled by the entering agency. It is important to note that once a person has been adjudicated a mental defective or committed to any mental institution, he or she is federally disqualified from receiving a firearm and will remain so unless or until the person secures an ATF Relief from Disabilities under 18 U.S.C. § 478.144. *State law cannot restore a person to competency and satisfy the federal requirements.*

**4.4.4 ENTERING RECORDS ON ILLEGAL ALIENS**

The ICE and local, state, and federal agencies are authorized to enter and update records on individuals who are in the United States unlawfully.

**Note:** For a discussion of terms and definitions that apply to this type of entry, see Section 3.5 (Prohibitor 922 [g] [5]: Persons who are aliens and are illegally or unlawfully in the United States).

The entering agency must use the PCA code E when entering a record containing information on illegal aliens. This type of record remains on file indefinitely unless the record is canceled by the entering agency.

**4.4.5 ENTERING RECORDS ON DENIED PERSONS**

Local, state, and federal agencies are authorized to enter and update records on persons who are appropriate for inclusion in the Denied Persons File.

The Denied Persons File contains records on individuals who do not appear in any national database, such as the NCIC or the IBI, but who are disqualified from receiving a firearm under federal law. Examples of types of records that should be entered into the Denied Persons File are:

- Warrants not recorded in the III or the NCIC.
- Protection orders that do not meet the NCIC entry criteria but do disqualify the subject under the Brady Law.
- Felony convictions not recorded in the III or the NCIC.
- Misdemeanor crimes of domestic violence.
- Criminal history records not supported by fingerprints (subject under indictment or information).
- Mental health records protected by state privacy laws.

**Note:** Do not enter into the Denied Persons File any records that are active in the NCIC or the III. Do not enter any records on persons disqualified from receiving a firearm under state law who are not disqualified under federal law.

The entering agency must use the PCA code I when entering a record in the Denied Persons File. This type of record remains on file indefinitely unless the record is canceled by the entering agency or an expiration date (provided by the agency) is reached.

#### **4.4.6 ENTERING, MODIFYING, AND CANCELING NICS INDEX RECORDS**

Records can be entered, modified, or canceled in the NICS Index individually via the NCIC-FE or in large quantities via Batch Data Transfer. For additional assistance on entering records into the NICS Index, please contact: A NICS Index Liaison Specialist at (304) 625-7348.

#### **4.5 VOLUNTARY APPEAL FILE (VAF)**

Pursuant to a Final Rule enacted on July 20, 2004, and published in the Federal Register, Volume 69, Number 141, the Department of Justice established the NICS VAF. The VAF is intended as a service to persons whose purchase of a firearm has been delayed or denied because of incorrect or insufficient information; e.g., persons who were denied because they have names and dates of birth that are similar to disqualified individuals. Such persons may request that the NICS Section maintain in the VAF information about themselves that supports their eligibility for future firearm purchases. The VAF is managed by the FBI and maintained by the FBI NICS Section.

The VAF is an electronic file maintained separately from the NICS. It is based upon paper documentation, such as certified court records, submitted by the applicant or discovered in the course of background research. A substantial benefit of the VAF is to free lawful firearm purchasers from the necessity of submitting multiple copies of documentation in the course of initiating numerous appeals.

Entry in the VAF of records on lawful firearm purchasers who might appear to be disqualified will decrease the amount of time needed to process approved

transactions. It is important to note, however, that entry in the VAF does not assure an individual an automatic proceed response. Nor does inclusion exclude an individual from a NICS background check. There is always the possibility that once a subject is entered into the VAF, additional charges could appear on the subject's record, requiring additional research to determine if the new information is prohibiting.

A NICS search extends to the VAF only when an individual has provided a Unique Personal Identification Number (UPIN) and has a hit in one of the three nationally held databases or in the automatic query of the ICE databases.

The VAF contains the following fields: first name, last name, middle name, cadence (Jr., Sr., III), sex, race, date of birth, height, weight, \*social security number, place of birth, eye color, hair color, state of residence, country of citizenship, ICE issued alien identification number, \*driver's license number, \*state identification number, \*military identification number, UPIN, non-identical to FBI number, non-identical to NICS Index NRI number, identical to FBI number, reason field, miscellaneous comments, code for approved or disapproved status, and active or inactive status (\* optional fields).

Eventually, the VAF will be incorporated into the NICS and will be available for NICS background checks conducted by the FBI NICS Section and by POC states. Until the file is fully developed, however, the NICS Section will maintain the VAF as an electronic file, separate from the NICS. The information it contains is available to POCs on Law Enforcement Online (LEO). (See Section 4.5.2.)

#### **4.5.1 VAF APPLICATION PROCESS**

Potential purchasers may apply for entry into the VAF by completing and signing an application form and submitting a set of fingerprint impressions prepared by a law enforcement agency that has stamped its name, address, and telephone number on the fingerprint card.

The signed Applicant Statement authorizes the FBI NICS Section to retain information that would otherwise be destroyed upon the approval of the firearm transaction. The information retained includes but is not limited to a fingerprint card, court documentation, correspondence, and any other information contained in the applicant's appeal file, if one exists. In addition, the applicant must provide a justification for his or her inclusion in the VAF, i.e., the reason the individual expects to receive a denial or a delayed response.

The FBI NICS Section will accept any certified court documentation including pardons and evidence of ATF Relief of Disabilities. The information is retained in the VAF paper file and will not be returned.

At the conclusion of the FBI NICS Section's research, the applicant will receive a letter indicating the outcome of the research as being successful, unsuccessful, or insufficient information. Successful applicants will be provided a UPIN, which they will provide to the FFL for all future purchases. The applicant will retain the original letter from the FBI NICS Section.

**Note: Entry into the VAF will not automatically result in a proceed response on subsequent purchases. A complete NICS check is still required and will result in denial if additional prohibitive information is discovered.**

#### **4.5.2 VAF CURRENT ACCESS**

Until the VAF is available on the NICS, the FBI will keep the VAF information on LEO to help POCs determine the eligibility of persons who have provided a UPIN indicating that they are listed in the VAF.

The VAF site has restricted access. Only FBI employees, state POCs, or designated law enforcement officials authorized to conduct NICS background checks for firearms may access the VAF. POCs may access the VAF from the LEO home page by clicking on the following:

LEOSIGS  
PUBLIC LEOSIGS  
CJIS  
Programs  
NICS  
NICS VAF

**Note:** If the POC does not have access to the VAF, the user should click on the Request Access to VAF button and follow the instructions. Authorized users will receive an e-mail confirmation when access is granted. Expedited access may be requested by telephone: (304) 625-2618.

Viewable fields include the subject's UPIN, complete name, place of birth, sex, date of birth, social security number, race, state of residence, country of citizenship, and hit summary. The hit summary section displays all records that hit on subjects at the time they were entered into the VAF.

#### **4.5.3 GUIDELINES FOR REVIEWING THE NICS VAF**

Records on individuals maintained in the NICS VAF are listed both by UPIN (numerically) and by last name (alphabetically). POCs may search for an individual's VAF information by using the search engine (binoculars) on the

tool bar. Entering either the UPIN or the individual's last name will perform the search. A pound sign (#) separates each individual's record information in the NICS VAF.

After locating the individual's VAF entry, the POC must first note the abbreviation in the Fingerprint Card ID Field. The records descriptively matched are either identical (ID) or nonidentical (NI) by fingerprint comparison.

If the record is identical, the individual's arrest information is listed by each date of arrest (DOA). After each arrest record there is a comments field, which states why the charge is not a Brady Prohibitor. A dotted line (.....) separates each arrest from the next.

**Note:** The DOAs listed in the VAF are the only ones that the FBI NICS Section has researched. If a POC locates additional charges or DOAs that are not listed in the VAF, or if the subject matches a new III record that is not cited in the VAF, it is the responsibility of the POC to determine whether the additional arrests or records contain state or federal disqualifiers.

**POCs that identify a disqualifier must contact the NICS VAF Liaison Analyst at (304) 625-7460.**

#### 4.5.4 VAF RETENTION

The NICS will retain VAF records indefinitely except under the following conditions:

1. If at any time individuals wish to be removed from the VAF, the FBI NICS Section is required, upon written request from the individuals, to destroy all records submitted and to return the fingerprint cards to them.
2. If disqualifying records on individuals are uncovered after their entry into the VAF, the FBI NICS Section may remove the individuals' information from both the paper and the electronic files without obtaining the consent of the individuals.

In such cases, the FBI NICS Section will notify the individuals that their information has been removed from the VAF and will return their fingerprint cards to them.

3. The FBI NICS Section will purge any information regarding rejected VAF applicants and will return their fingerprint cards to them.

#### 4.5.5 VAF CONTACTS

At any time additional information is needed regarding a VAF entrant, POCs should contact the NICS Customer Service, toll free, at (877) 444-6427 and press option 6 to speak to a VAF representative.

A potential VAF applicant should submit an applicant statement, a set of ten rolled fingerprints prepared by a law enforcement agency, a statement explaining the request for inclusion in the File, and any supporting documentation to the following address:

Federal Bureau of Investigation  
NICS Section  
Voluntary Appeal File Team  
Post Office Box 4278  
Clarksburg, WV 26302-9922

## 5.0 SECTION 5 – BACKGROUND CHECKS FOR NON-U.S. CITIZENS

### 5.1 CATEGORIES OF ALIENS

On February 13, 2002, the Attorney General instructed the FBI to work with the ATF and the ICE to enhance enforcement of the general prohibition on aliens possessing and receiving firearms. The enhanced enforcement directive required that the FBI and POCs conduct IAQs on all non-U.S. citizens attempting to purchase, possess, or redeem a firearm. The ATF Form 4473 supplies information concerning the citizenship status of prospective gun buyers. The ICE Law Enforcement Support Center (LESC) provides responses (IARs) to queries from the FBI NICS Section and the POCs concerning an individual's citizenship status.

Prior to initiating an electronic query to the NICS via the NCIC, the POC must confirm the citizenship status of the applicant and, if the applicant is not a citizen of the United States, conduct an IAQ. The information in this section is intended to assist POCs to process IAQs as appropriate and to interpret the responses (IARs).

There are different types of aliens in the United States:

- Undocumented aliens
- Parolees
- Asylees
- Refugees
- Legal Permanent Resident (LPR) Aliens
- Immigrant Aliens
- Nonimmigrant Aliens

**Note:** If an alien is in legal and lawful status and that status is LPR, parolee, asylee, or refugee at the time of the NICS check, that alien must have 90 days' continuous residence in legal/lawful status. For example, in the case of an LPR who was a legal nonimmigrant prior to receiving LPR status, the POCs should count the 90 days from the time that the alien was legally and continuously present in the United States—even if during the 90 days his status changed from one legal status (e.g., nonimmigrant) to another (e.g., LPR). If, however, the alien was in illegal status prior to obtaining LPR, refugee, parole, or asylee status, the 90-day period would have to start only from the date the alien achieved some kind of legal status.

Example: John Doe, an alien from Ireland, enters the United States illegally in 1995. In 2000, he applies (pending application) for immigrant status (as an LPR). On August 1, 2005, he is granted LPR status. On August 3, he attempts to purchase a firearm and shows the FFL his apartment lease, which dates back to

1995. The alien's 90-day proof of residency is counted from August 1, 2005—not previous to that date. He was not in legal status prior to August 1, 2005.

For the purpose of firearms transactions, the two categories of concern are Immigrant and Nonimmigrant aliens:

- Immigrant aliens are persons who have been lawfully admitted to the United States and afforded the privilege of residing permanently in this country. Immigrant aliens have all the rights of U.S. citizens except the title.
- Nonimmigrant aliens are persons having a residence in a foreign country that they have no intention of abandoning. A nonimmigrant alien is admitted to the United States for a temporary period of time for a specific purpose, such as travel, study, or business.

All non-U.S. citizens must carry with them, at all times, an ICE-issued Alien Identification Number (A#). This number can be either an Alien Registration Number (ARN)—which can be up to 9 digits in length—or an I-94 Arrival/Departure Record Admission Number—which is 11 digits in length.

**Note:** If a firearm purchaser provides more than one country of citizenship and one of the countries is the United States, the buyer is a U.S. citizen and does not have to provide an ICE-issued number or proof of 90-day residency. No IAQ is required.

## 5.2 BACKGROUND CHECKS OF ALIENS

Aliens must be legally and lawfully in the United States in order to possess, purchase, or acquire a firearm. Any firearm buyer who is not a U.S. citizen must provide to the FFL the following documentation, which the FFL must state to the FBI/POC as valid proof:

- Proof of 90-day residency within a state prior to the purchase.
- Proof of 90 consecutive days in the United States.
- A form of government-issued photo identification.
- A valid ICE-issued A#, such as an ARN or I-94 number.

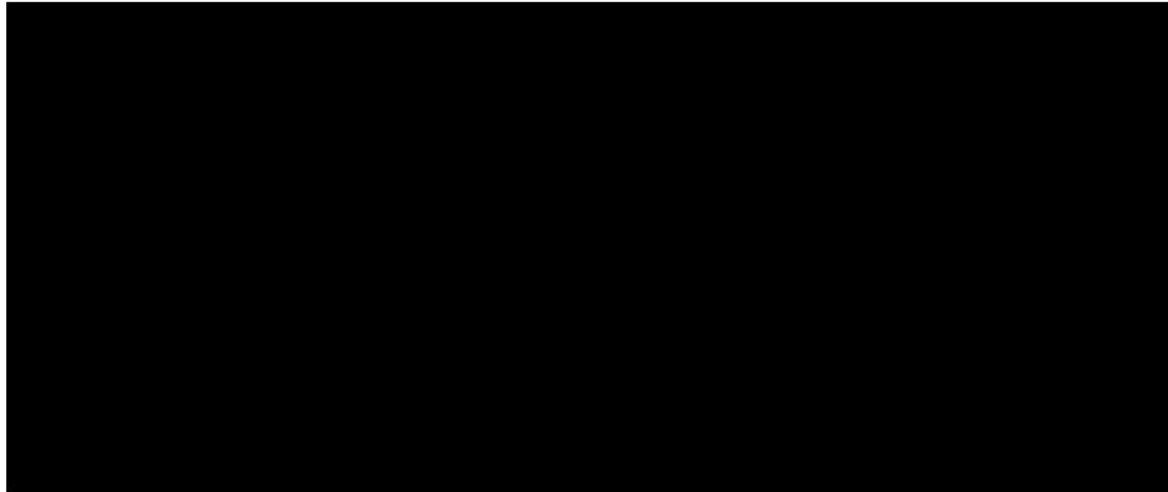
In addition to the above-listed documentation, a nonimmigrant firearm purchaser must show proof of one of the following exceptions:

- The individual has been admitted to the United States for lawful hunting or sporting purposes or is in possession of a hunting license or permit lawfully issued in the United States.

- The individual is (1) an official representative of a foreign government, (2) accredited to the U.S. government or to the foreign government's mission to an internal organization having its headquarters in the United States, or (3) en route to or from another country to which he or she is accredited. The POC must confirm this information with the Department of State (DOS).
- The individual is an official of a foreign government or a distinguished foreign visitor who has been so designated by the DOS. The POC must confirm this information with the DOS.
- The individual is a foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business. The POC must confirm this information with the DOS.
- A waiver from the U.S. Attorney General.

### 5.2.1 THE IAQ

In order to conduct an IAQ, the POC must have the individual's country of residence and his or her A#, which will consist of an ARN or I-94 number.



### 5.2.2 INTERPRETING NONIMMIGRANT ALIEN RESPONSES

Step 1. In interpreting an IAQ response, first determine whether the subject of the IAQ record is a valid match to the potential purchaser/applicant.

If Yes, go to Step 2.

If No (i.e., the subject of the IAQ and the purchaser/applicant do not appear to be a match based on name, personal descriptors,

and/or the ARN or I-94), first cancel the transaction and initiate a new one, ensuring the correct ARN or I-94 number is entered. If the second response is not a valid match, **cancel** the transaction.

- Step 2. Review the date provided in the DATE ADMITTED field located on the IAR. Example:

CLASS OF ADMISSION/ A1  
DATE ADMITTED/ 20031208  
ADMIT UNTIL/ 20080717  
I-94 ADMISSION#/ 01234567891

Have 90 days elapsed from the date admitted?

If **Yes**, go to Step 3.

If **No**, the transaction must be **canceled**.

- Step 3. Review the date provided in the ADMIT UNTIL/ field located on the IAR. Example:

CLASS OF ADMISSION/ A1  
DATE ADMITTED/ 20031208  
ADMIT UNTIL/ 20080717  
I-94 ADMISSION#/ 01234567891

**Note:** The numbers 99991231 or 99999999 displayed in the ADMIT UNTIL/ field signify that the subject is a lawful nonimmigrant in the United States whose authorized status has not expired.

Has the date in the ADMIT UNTIL/ field in the IAR expired?

If **Yes** (the date has expired) and the response states:

THE SUBJECT OF THIS INQUIRY IS A NONIMMIGRANT AUTHORIZED TO REMAIN IN THE UNITED STATES UNTIL THE DATE INDICATED.

**Deny** the transaction.

If **No** (the date has not expired), go to Step 4.

- Step 4. Review the response. Does it contain the following statement:

THE SUBJECT OF THIS INQUIRY IS A NONIMMIGRANT AUTHORIZED TO REMAIN IN THE UNITED STATES UNTIL THE DATE INDICATED.

If **Yes**, go to Step 5.

If No (i.e., the response has any other statement), go to Step 6.

Step 5. Locate the Alien Exception field. The potential purchaser/applicant must meet one of the following exceptions:

1. Admitted to the United States for lawful hunting or sporting purposes or is in possession of a hunting license or permit lawfully issued in the United States.
2. An official representative of a foreign government who is:
  - Accredited to the United States government or the government's mission to an internal organization having its headquarters in the United States; or
  - En route to or from another country to which that alien is accredited.
3. An official representative of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State.
4. A foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business.
5. Waiver from the U.S. Attorney General.

Does the potential purchaser/applicant meet the criteria for an exception?

If Yes, validate the exception and, if no other disqualifying information is found in any other database, allow the transaction to proceed. (Exceptions 2-4 must be verified by the Department of State.)

If No, cancel the transaction.

Step 6. The IAQ responses and related action steps follow:

Response: THE SUBJECT OF THIS INQUIRY IS CURRENTLY IN REMOVAL PROCEEDINGS.

Action: DENY the transaction.

Response: THE SUBJECT OF THIS INQUIRY HAS BEEN GRANTED VOLUNTARY DEPARTURE FROM THE UNITED STATES.

Action: **DENY** the transaction.

Response: THE SUBJECT OF THIS INQUIRY WAS PAROLED INTO THE UNITED STATES FOR HUMANITARIAN PURPOSES.

Action: If 90 days have elapsed from the DATE ADMITTED, allow the transaction to **Proceed**. If less than 90 days have elapsed from the DATE ADMITTED, **Cancel** the transaction.

Response: THE SUBJECT OF THIS INQUIRY HAS BEEN PAROLED INTO THE UNITED STATES FOR LAW ENFORCEMENT PURPOSES.

Action: If 90 days have elapsed from the DATE ADMITTED, allow the transaction to **Proceed**. If less than 90 days have elapsed from the DATE ADMITTED, **Cancel** the transaction.

Response: THE SUBJECT OF THIS INQUIRY HAS BEEN PAROLED INTO THE UNITED STATES FOR DEFERRED INSPECTION.

Action: If 90 days have elapsed from the DATE ADMITTED, allow the transaction to **Proceed**. If less than 90 days have elapsed from the DATE ADMITTED, **Cancel** the transaction.

**Note:** In querying prospective firearm purchasers who are nonimmigrants, deny the transaction if any of the following criteria are met:

- The subject does not match the individual in the nonimmigrant response.
- The authorized period of admission has expired.
- The buyer is not in possession of a hunting license or permit lawfully issued in the United States prior to the initial check.

If the nonimmigrant prospective firearm purchaser meets both of the following criteria, allow the transaction to **proceed**.

1. The authorized period of admission is active.
2. The POC verified that the subject has a valid exception.

### 5.3 IMMIGRANT ALIEN RESPONSES

Step 1. Is the IAQ subject response identical to the potential purchaser/applicant?

If Yes, they are the same. Go to Step 2.

If No (i.e., the subject of the IAQ and the purchaser/applicant do not appear to be a match based on name, personal descriptors, and/or the ARN or I-94), first cancel the transaction and initiate a new one, ensuring the correct ARN or I-94 number is entered. If the second response is not a valid match, **cancel** the transaction.

Step 2. Review the date provided in the DATE OF ENTRY (DOE) field located on the IAR.

Have 90 days elapsed from the date of entry?

If Yes, go to Step 3 and interpret the response for final eligibility.

If No, the transaction must be **canceled**.

Step 3. The IAQ responses and related action steps follow:

**Response:** THE SUBJECT OF THIS INQUIRY WAS LAWFULLY ADMITTED INTO THE UNITED STATES FOR PERMANENT RESIDENCE BY AN IMMIGRATION AND CUSTOMS ENFORCEMENT OFFICER.

**Action:** If Steps 1 and 2 have been met, allow the transaction to **PROCEED**.

**Response:** THE IMMIGRATION STATUS OF THIS SUBJECT CANNOT BE DETERMINED FROM THE ICE DATABASE RECORDS. A REVIEW OF THE SUBJECT'S ADMINISTRATIVE FILE IS NECESSARY TO DETERMINE IMMIGRATION STATUS.

**Action:** **DELAY** the transaction, wait for a response from ICE.

**Response:** THE SUBJECT OF THIS INQUIRY HAS BEEN PAROLED INTO THE UNITED STATES FOR DEFERRED INSPECTION.

**Action:** Ensure 90 days have elapsed from the DATE OF ENTRY (DOE). If Yes, allow the transaction to **PROCEED**. If No, **CANCEL** the transaction.

Response: THE SUBJECT OF THIS INQUIRY IS CURRENTLY IN REMOVAL PROCEEDINGS.

Action: Contact LESC for additional information.

Response: THE SUBJECT IF THIS INQUIRY HAS BEEN GRANTED VOLUNTARY DEPARTURE FROM THE UNITED STATES.

Action: Contact LESC for additional information.

Response: THE SUBJECT OF THIS INQUIRY WAS NOT LAWFULLY ADMITTED INTO THE UNITED STATES BY AN IMMIGRATION AND CUSTOMS ENFORCEMENT OFFICER.

Action: **DENY** the transaction.

Response: THE INDIVIDUAL NAMED IN THIS INQUIRY IS THE SUBJECT OF A FINAL ADMINISTRATIVE ORDER OF REMOVAL FROM THE UNITED STATES.

Action: **DENY** the transaction.

#### 5.4 RESPONSES REQUESTING IDENTIFIERS

1. BASED ON THE INFORMATION PROVIDED, WE WERE UNABLE TO FIND AN ICE RECORD INDICATING LAWFUL STATUS. THE ABSENCE OF AN ICE RECORD INDICATING LAWFUL STATUS, RATHER THAN AN AFFIRMATIVE RECORD OF UNAUTHORIZED STATUS, IS THE MOST COMMON INDICATOR OF UNAUTHORIZED STATUS, AS MOST UNAUTHORIZED ALIENS ARE NOT YET KNOWN TO THE ICE. IF YOU HAVE ADDITIONAL IDENTIFIERS, PLEASE RESUBMIT YOUR REQUEST.
2. FIREARMS CHECKS MUST INCLUDE SUFFICIENT ICE NUMERIC IDENTIFIERS SUCH AS AN ALIEN REGISTRATION NUMBER OR ADMISSION NUMBER. FOR FURTHER ASSISTANCE CONTACT THE LESC AT (802) 872-6020.

## 6.0 SECTION 6 – INTERPRETING MILITARY CHARGES

A NICS inquiry may hit on a record that contains military charges. POCs must be able to interpret the actions of military courts in order to determine whether the subject of the record is disqualified from purchasing or receiving a firearm.

All military arrests, with or without dispositions, must be carefully examined. When disposition information is available, the POC must identify the level of court-martial or administrative action. Complete information on military charges is found in the *Uniform Code of Military Justice* (UCMJ).

The first step in researching a military record is to contact the appropriate branch of the service. If the contact information is not available or if the date of the charge exceeds that branch's time limit for storing records, contact the National Personnel Records Center to request the record. A military service number will facilitate the search, particularly for records prior to 1970. Check the MNU field on the subject's FBI record to obtain this number.

### 6.1 MILITARY COURTS, HEARINGS, AND ADMINISTRATIVE ACTIONS

In the military justice system, all charges under a single arrest are dealt with at one hearing, and the disposition on the record covers all charges. In addition, if a military record indicates incarceration in a correctional facility, the confinement time may cover the total time the individual served: i.e., the time may have been imposed due to more than one courts-martial. The POC must conduct research sufficient to determine what types and how many courts-martial occurred and whether any of the proceedings disqualified the individual from purchasing or possessing a gun.

#### 6.1.1 COURTS-MARTIAL

**General Court-Martial (GCM)** – This military court tries the most serious offenses. The maximum authorized punishment that may be imposed by a general court-martial is limited only by the maximum allowable for the offense under consideration; punishment may extend to death. POCs must research all GCM convictions to determine whether the maximum confinement the court-martial could have imposed exceeds one year, thus disqualifying the subject from purchasing a firearm. (Only a GCM may impose confinement for more than 12 months.)

**Special Court-Martial** – A special court-martial is the intermediate-level court in the military system. The special court-martial may adjudge any sentence authorized by the UCMJ except death, dishonorable discharge, dismissal, or confinement in excess of 12 months. Special court-martial convictions may

disqualify an individual from purchasing a gun only if the conviction involved a crime of domestic violence or unlawful drug use or addiction within the past year.

**Summary Court-Martial** – A summary court-martial tries minor offenses. The maximum punishment that may be adjudged is 30 days' confinement at hard labor. A summary court-martial disqualifies a potential firearm purchaser only if the conviction is for domestic violence or unlawful drug use or addiction within the past year.

#### **6.1.2 UCMJ ARTICLES AND DISCIPLINARY ACTIONS**

**Nonjudicial Punishment (Article 15)** – Nonjudicial punishment refers to disciplinary actions that are not imposed by a court of justice. The nonjudicial punishments authorized in Article 15 provide commanders with an essential and prompt means of maintaining good order and discipline. They involve administrative actions intended to correct or rehabilitate offenders. Because Article 15 actions are not criminal convictions, they do not carry the stigma of a court-martial conviction. An Article 15 action may prohibit a firearm transfer if the discipline involves recent charges based on confirmed unlawful drug use or addiction.

**Pretrial Investigation (Article 32 hearing)** – An Article 32 hearing is the military version of a grand jury investigation. If the case is referred to a GCM following the hearing, the subject is considered “under indictment” and is disqualified from purchasing a firearm per federal prohibitor 922 (n).

**UCMJ Articles and Domestic Violence Offenses** – Within the UCMJ, the following offenses may be related to domestic violence if the disposition shows a conviction at a court-martial. If the conviction resulted from a GCM, research the record for a possible felony conviction.

- Article 120 – Rape & Carnal Knowledge
- Article 124 – Maiming
- Article 125 – Sodomy
- Article 128 – Assault
- Article 133 – Conduct Unbecoming an Officer
- Article 134 – Assault, Negligent Homicide, Indecent Acts or Liberties with a Child, Kidnapping, Pandering and Prostitution, Reckless Endangerment

#### **6.1.3 DISCHARGES THAT MAY INVOLVE A FEDERAL DISQUALIFIER**

There are several types of discharges from the military, some of which may indicate the individual is disqualified from purchasing or receiving a firearm.

The following are the types of discharges that POCs must research before allowing a firearm transfer to proceed:

**Dishonorable Discharge** – A dishonorable discharge may be adjudged only by a GCM and is imposed only on enlisted persons and warrant officers who are not commissioned. This type of discharge is reserved for persons who are separated under conditions of dishonor after having been convicted of (1) offenses usually recognized in civilian jurisdictions as felonies or (2) offenses of a military nature requiring severe punishment. A dishonorable discharge always disqualifies an individual from purchasing a firearm under federal prohibitor 922 (g)(6).

**Dismissal** – A dismissal applies to commissioned officers, commissioned warrant officers, cadets, and midshipmen and may be adjudged only by a GCM. A dismissal disqualifies the individual from firearm transfers under federal prohibitor 922 (g)(6).

**Chapter 10 Discharge** – A Chapter 10 discharge is a discharge for the good of the service. It is not a conviction but an administrative action. A Chapter 10 discharge may disqualify the individual from purchasing a firearm if the charge involves a recent action based on confirmed unlawful drug use.

**Chapter 14 Discharge** – A Chapter 14 discharge indicates the individual was separated from the military because of a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or being away without official leave. A Chapter 14 discharge is not a conviction. It is an administrative action that may disqualify the individual from purchasing a firearm if the charge involves a recent action based on confirmed unlawful drug use.

**Note:** A **bad conduct discharge** indicates that an individual, though not guilty of a serious offense (either civilian or military), behaved badly. The bad conduct discharge may be adjudged by either a general or a special court-martial. This type of discharge does not disqualify the individual from purchasing a firearm.



## 7.0 SECTION 7 – ATF ALTERNATE PERMITS

### 7.1 SCOPE

When the NICS began operation, in November 1998, the ATF qualified certain states to issue permits that would suffice in lieu of a NICS background check at the point of transfer. (See 18 U.S.C. § 922 [t][3].) These documents are called “alternate permits” (or “in lieu of permits”). In order to issue an alternate permit, a state must complete a NICS search as part of the permit-issuing and renewal (or refresher) process. Alternate permits are issued for a designated period of time; many are valid for up to five years, depending on the law in the particular state or U.S. Territory. A purchaser or transferee who presents an active alternate permit to an FFL is not required to undergo a NICS background check with each firearm transfer.

According to the ATF regulation 27 C.F.R. 478.102(d), a prospective gun buyer or transferee is not required to undergo a NICS background check if he or she has presented to the FFL a valid permit or license that meets all of the following requirements:

1. Allows the transferee to possess, acquire, or carry a firearm.
2. Was issued not more than five years earlier by the state in which the transfer is to take place.
3. Was issued in a state wherein state law provides that such a permit or license is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a firearm by the transferee would be in violation of local, state, or federal law—and only provided that the information available to such official includes a NICS background check.

### 7.2 PERMIT PROCESS

State agencies that process alternate gun permits are responsible for ensuring that there is a NICS background check on the individual seeking the permit. The state agency issuing the permit is responsible for running a check of its state systems and looking for both federal and state prohibitors regarding firearms; the state must also look for additional prohibitors regarding permits.

### 7.3 PERMIT APPLICATION REQUIREMENTS

The Identification and Investigative Services Section (IISS) conducts a fingerprint check to ascertain whether the individual has any past criminal history record. The IISS charges contributing agencies a fee to process these submissions.

A prior agreement must be set up with the IISS to perform these checks. The IISS requires that information be entered in the following mandatory data fields:

Name  
Date of Birth  
Race  
Weight  
Hair Color  
Sex  
Height  
Eye Color  
Place of Birth (2-digit state/country)  
Date Fingerprinted  
Citizenship (2-digit country code only)  
If non-U.S. citizen, the number (A# or I-94) issued by ICE in the  
MNU field  
ORI (number, name, and address)  
Reason Fingerprinted (CWP, Firearm, Weapon, etc.)  
All ten rolled and flat fingerprint impressions

If some or all of the required information is missing or if the fingerprint impressions are deemed insufficient, the IISS can reject the fingerprint card. In such cases, the submitting agency will receive a reject message indicating the specific error.

**APPENDIX A — ACRONYMS**

A#	Alien Identification Number (issued by ICE)
AFIS	Automated Fingerprint Identification System
APB	Advisory Policy Board
ARI	Agency Record Identifier
ARN	Alien Registration Number
ASI	Alternate Search Identifier
AST	Appeal Services Team
ATF	Bureau of Alcohol, Tobacco, Firearms and Explosives
Brady Act	Brady Handgun Violence Prevention Act of 1993
BRD	Brady Indicator
CFR	Code of Federal Regulations
CHR	Criminal History Record Request Notification Message
CHRI	Criminal History Record Information
CJIS	Criminal Justice Information Services Division
CLEO	Chief Law Enforcement Officer
CSA	CJIS Systems Agency (formerly CTA)
CSO	CJIS Systems Officer (formerly CTO)
CWP	Concealed Weapons Permit
DACS	Deportable Alien Control System
DFF	Deported Felon
DGN	Date of Birth Group Number
DNY	Denying Agency
DOA	Date of Arrest
DOB	Date of Birth
EDP	Enter Denied Person
EOT	End of Transmission
ET	Eastern Time
FBI	Federal Bureau of Investigation
FFL	Federal Firearms Licensee
FIFS	Felon Identification in Firearms Sales
FLS	Federal Licensing System
FNG	First Name Group
FNU	FBI Number
FQ	Record Inquiry via Nlets
GCA	Gun Control Act
GCM	General Court-Martial

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HDR	Header
HGT	Height
I-94	Arrival/Departure Record Admission Number (issued by ICE)
IAFIS	Integrated Automated Fingerprint Identification System
IAQ	Immigration Alien Query
IAR	Immigration Alien Response
ICD	Interface Control Document
ICE	United States Immigration and Customs Enforcement
ICN	Identification Control Number
ID	Identical
IDAS	Identification Automated System
IFFS	Identification for Firearms Sales
III	Interstate Identification Index
IISS	Identification and Investigative Services Section
INA	Immigration and Nationality Act
INTERPOL	International Criminal Police Organization
IQ	Identification Query via Nlets
LEO	Law Enforcement Online
LNG	Last Name Group
LPR	Legal Permanent Resident
MCDV	Misdemeanor Crimes of Domestic Violence
MDP	Modify Denied Person
MFC	Message Field Code
MKE	Message Key
MNU	Miscellaneous Number Field
MRD	Machine Readable Data
NAM	Name
NCIC	National Crime Information Center
NCIC-FE	National Crime Information Center–Front End
NDN	NICS Denial Notification
NDO	NICS Denial Overturned
NFF	National Fingerprint File
NI	Nonidentical
NIC	NCIC Identification Code
NICS	National Instant Criminal Background Check System
NIIS	Nonimmigrant Information System
Nlets	International Justice and Public Safety Information Sharing Network (formerly, National Law Enforcement Telecommunications System)
NLN	NICS Delay Notification
NPN	NICS Proceed Notification

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NRI	NICS Record Identifier
NSEERS	National Security Entry-Exit Registration System
NTN	NICS Transaction Number
OCA	Originating Agency Case Number
OFF	Offense Field
ORI	Originating Agency Identifier
PCA	Prohibited Category
PCO	Protection Order Conditions
PDQ	Processing for Daily Quality
PL	Public Law
POB	Place of Birth
POC	Point of Contact
PUR	Purpose Code
QH	Query History
QN	Query NICS
QNP	Query NICS Protection Order
QNR	Query NICS Record
QW	Query Warrant
RAC	Race
RCMP	Royal Canadian Mounted Police
SDP	Supplement Denied Person
SENTRY	Bureau of Prisons SENTRY System
SFL	State Firearms Licensee
SID	State Identification Number
SMT	Scars, Marks, Tattoos
SOC	Social Security Number
SOR	State of Residence
STN	State Transaction Number
UCMJ	<i>Uniform Code of Military Justice</i>
UPIN	Unique Personal Identification Number
USC	United States Code
USSS	United States Secret Service
VAF	Voluntary Appeal File
VGTOF	Violent Gang and Terrorist Organization File
WGT	Weight
XDP	Cancel Denied Person

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**PURPOSE CODES**

- |   |  |
|---|--|
| B | Both Handgun and Long Gun                      |
| C | Collateral Check for Both Handgun and Long Gun |
| D | Collateral Check for Handgun                   |
| E | Collateral Check for Long Gun                  |
| H | Handgun  |
| L | Long Gun                                       |
| R | Redemption Check for Both Handgun and Long Gun |
| S | Redemption Check for Handgun                   |
| T | Redemption Check for Long Gun                  |

## APPENDIX B – TERMINOLOGY

**BRADY ACT:** The Brady Handgun Violence Prevention Act (Public Law 103-159) was signed into law on November 30, 1993.

**BRADY INDICATOR:** A message field in the NCIC Protection Order File that indicates if an individual is federally prohibited to ship, transport, possess, or receive a firearm. Individual states make the decision whether the order will have a "Brady Indicator" to prohibit the receipt or possession of a firearm.

**FEDERAL FIREARMS LICENSEE (FFL):** A person licensed by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) as a manufacturer, dealer, or importer of firearms.

**FELON IDENTIFICATION IN FIREARMS SALES (FIFS) FLAGS:** The program for FIFS flags began in December 1992. The flags were based on federal prohibitors, not state prohibitors. With the passage of the Lautenberg Amendment in September 1996, the name of the program changed to Identification for Firearms Sales (IFFS). See below.

**FIREARM RETRIEVAL REFERRAL:** When the NICS personnel discover that the subject is disqualified and the transfer of a firearm has taken place, the subject is illegally in possession of a firearm. The firearm must then be retrieved. The ATF is contacted to investigate and initiate the retrieval.

**IDENTIFICATION FOR FIREARMS SALES (IFFS) PROGRAM:** A program designed specifically for the NICS to designate convictions and applicable record information contained in the Interstate Identification Index that qualify as a federal firearm prohibition under the Gun Control Act. The flags in the IFFS Program are set by state bureaus and/or state repositories. These flags are based on federal prohibitors, not state prohibitors.

**IMPLIED PROCEED:** The initial, automatic status applied to all state transactions processed through the NICS from a state.

**INTERSTATE IDENTIFICATION INDEX (III):** A computerized system that contains records from participating states and the FBI's criminal history databases.

**MISSING DISPOSITION:** This occurs when the sentencing or other final settlement of a criminal case is not posted to the criminal history record.

**NAKED ARREST:** Criminal history without a final disposition.

**NATIONAL CRIME INFORMATION CENTER (NCIC):** A system that stores data accessible to the law enforcement community. This information is collected by criminal

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justice agencies and includes such information as wanted persons, missing persons, stolen property and the protection order file, etc.

**NATIONAL CRIMINAL HISTORY IMPROVEMENT PROGRAM (NCHIP):** A program designed to assist states in meeting evolving state and federal requirements concerning criminal history related records, such as protection orders and sexual offender registry.

**NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM (NICS):** An automated system that a Federal Firearms Licensee (FFL) may contact, via the Federal Bureau of Investigation or a state Point of Contact (POC), for information on whether receipt of a firearm by a person who is not licensed would violate Title 18, U.S.C., Section 922 (g) or (n), or state law. The purpose of the NICS is to immediately provide authorized law enforcement agencies with information they need to determine whether to allow or deny a firearm transfer.

**NCIC FOREIGN FUGITIVE FILE:** This file contains records of persons wanted by another country for a crime that would be a felony if it were committed in the United States.

**NCIC IMMIGRATION VIOLATOR FILE:** This file contains three categories of records on aliens.

**NCIC PROTECTION ORDER FILE:** This file contains protection orders issued for the purpose of preventing violent or threatening acts or harassment against another person. Active protection orders, which contain a Brady Indicator of "yes," will disqualify a person from purchasing a firearm under federal law.

**NCIC U.S. SECRET SERVICE PROTECTIVE FILE:** This file contains records on individuals who may pose a threat to the President and/or others afforded protection by the U.S. Secret Service.

**NCIC WANTED PERSON FILE:** This file contains information on persons for whom a federal warrant, felony warrant, or serious misdemeanor warrant is outstanding, including domestic and foreign warrants.

**NICS INDEX:** A database contributed to by local, state, and federal agencies; it contains information on persons listed in federally prohibited category files that disqualifies them from receiving a firearm under federal law.

**NICS INDEX CITIZENSHIP RENUNCIANT FILE:** This file contains information from the Department of State on persons who have renounced their U.S. citizenship.

**NICS INDEX CONTROLLED SUBSTANCE ABUSE FILE:** This file contains information provided by local, state, and federal agencies on persons who are unlawful users of or addicted to any controlled substance.

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**NICS INDEX DENIED PERSONS:** This file contains names and personal data on individuals who are federally disqualified from purchasing or owning a firearm; it does not include information that appears on any national database, such as NCIC or III.

**NICS INDEX DISHONORABLE DISCHARGE FILE:** This file contains information provided by the U.S. Coast Guard and the Department of Defense on persons who have been discharged from the Armed Forces under dishonorable conditions.

**NICS INDEX ILLEGAL/UNLAWFUL ALIENS FILE:** This file contains information provided by the local, state, and federal agencies on illegal or unlawful aliens.

**NICS INDEX MENTAL DEFECTIVE/COMMITMENT FILE:** This file contains information from the local, state, and federal agencies on persons who have been adjudicated as incompetent to handle their own affairs or have been involuntarily committed to a mental institution.

**OPEN:** The status of a transaction for which a final disposition has not yet been obtained to determine if an individual is eligible to purchase a firearm within three business days from the date of application, as required by Federal law.

**STATE POINT OF CONTACT:** An individual designated in each POC state to be the responsible party for assisting and relaying information to the state agencies that conduct NICS checks.



## **APPENDIX C – Forms and Charts**





## SERVICES OFFERED BY THE FBI/NICS

### State Liaison

[REDACTED] at (304) 625-7361 or [REDACTED]  
[REDACTED] at (304) 625-7531 or [REDACTED]

### POC Support Team

#### Western and North Central Regions

[REDACTED] at (304) 625-7451 or [REDACTED]  
[REDACTED] at (304) 625-7463 or [REDACTED]

#### Northeastern and Southern Regions

[REDACTED] at (304) 625-7335 or [REDACTED]  
[REDACTED] at (304) 625-7418 or [REDACTED]  
[REDACTED] at (304) 625-7474 or [REDACTED]

### Submitting Records to the NICS Index

NICS Index Liaison at (304) 625-7348

### Federal Agency Information

[REDACTED] at (304) 625-7399 or [REDACTED]  
[REDACTED] at (304) 625-7393 or [REDACTED]

### VGTOF Questions

[REDACTED] at (304) 625-7344

### VAF Questions

[REDACTED] at (304) 625-7460 or [REDACTED]

### Statute Research

Via e-mail at [statutes@leo.gov](mailto:statutes@leo.gov)

### System Development/Programming/State Tailoring

Sam DeMarco at (304) 625-7360 or [sdemarco@leo.gov](mailto:sdemarco@leo.gov)

### Chat Room

[REDACTED] at (304) 625-7531 or [REDACTED]

### Liaison Services Unit Supervisor

[REDACTED] at (304) 625-7361 or [REDACTED]

### Appeal Services

Via e-mail at [nicsappeals@leo.gov](mailto:nicsappeals@leo.gov); or  
NICS Customer Service, toll free, at (877) 444-6427



## State Support Request Form

State: \_\_\_\_\_ Contact Name: \_\_\_\_\_

Contact Phone Number: \_\_\_\_\_ Date: \_\_\_\_\_

\*\*\*\*\*  
I am interested in receiving support offered by the FBI National Instant Criminal Background Check System (NICS) Section addressing the following categories:

- NICS 101**
- Federal Prohibitors**
- State Prohibitors**
- Statute Interpretation**
- Research Strategies & Information Sharing**
- The NICS Index**
- ICE and IAQ Results**
- NICS Appeal Process**
- NICS Misuse Issues**
- Violent Gang and Terrorist Organization File (VGTOF)**
- The Voluntary Appeal File (VAF)**
- POC/Partial POC/Alternative Permit State Responsibilities**
- Implementing a Quality Assurance Program**
- Specialized ATF Training**
- Specialized ICE Training**
- Other:** \_\_\_\_\_

Number attending: \_\_\_\_\_

Projected date(s) and time(s): \_\_\_\_\_

Once completed, please forward this form via mail to:

NICS Section

Federal Bureau of Investigation OR via facsimile at (304) 625-2356

Attention: POC Support Team Attention: POC Support Team

PO Box 4278

Clarksburg, WV 26302

For more information regarding assistance offered by the NICS Section, please contact the NICS State Liaison Specialists, [REDACTED] at (304) 625-7361 or [REDACTED] at (304) 625-7531.





**U.S. Department of Justice**  
Federal Bureau of Investigation  
*Criminal Justice Information Services Division*

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National Instant Criminal Background Check System (NICS)

# **NICS Index Submission**

## **Fax Cover Sheet**

**Fax Number: (304) 625-2356**

**Attention:**  
NICS Index Liaison Specialist  
(304) 625-7348

From: \_\_\_\_\_ Date: \_\_\_\_\_

Name of Office: \_\_\_\_\_ Phone: \_\_\_\_\_

Special Instructions: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**NICS TRANSMITTAL FORM FOR  
AGENCY BATCH DATA****CONTACT AND RETURN INFORMATION**

AGENCY: \_\_\_\_\_ DATE OF TRANSMITTAL: \_\_\_\_\_

POINT OF CONTACT: \_\_\_\_\_

CONTACT ADDRESS: \_\_\_\_\_

CONTACT PHONE NUMBER: \_\_\_\_\_

CONTACT FAX NUMBER: \_\_\_\_\_

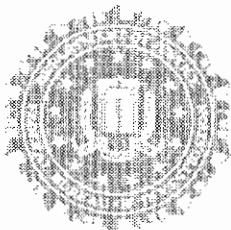
ENCLOSURES:  3480 Cartridge  CD ROM  3.5" Diskette  Hardcopy

NUMBER OF ENCLOSURES: \_\_\_\_\_

**RETURN INFORMATION REQUESTED** SUCCESS REPORT  ERROR REPORT  BOTH  FAX  BY MAIL**DATA DESCRIPTION**

(Use separate sheet if necessary.)

TAPE NUMBER	FILENAME(S) (EXP, MDP, SDP, or XDP)	NO. RECORDS

COMMENTS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Send data via UPS or Federal Express to:

Federal Bureau of Investigation  
Attn: NICS Index Liaison Specialist  
Module A-3  
1000 Custer Hollow Road  
Clarksburg, WV 26306



## Immigrant/Nonimmigrant Guide to Purchase/Possess

<b>IMMIGRANT</b>	<b>NONIMMIGRANT</b>
90 CONSECUTIVE days' residency	90 CONSECUTIVE days' residency
Photo ID	Photo ID
Valid ICE-issued ID (valid AR#)	Valid ICE-issued ID (valid I-94#)
	Meet one of the EXCEPTIONS*

**\*NONIMMIGRANT EXCEPTIONS**

- A. Admitted to the United States for lawful hunting or sporting purposes or is in possession of a hunting license or permit lawfully issued in the United States.**

IF THIS ALIEN EXCEPTION IS GIVEN, THE TRANSACTION MAY BE "PROCEEDED" IF THERE IS AN ABSENCE OF ANY ADDITIONAL PROHIBITIVE OR POTENTIALLY PROHIBITIVE CRITERIA.

- B. An official representative of a foreign government who is:**

1. Accredited to the U.S. Government or that foreign government's mission to an international organization having its headquarters in the United States; or
2. En route to or from another country to which that alien is accredited.

IF THIS ALIEN EXCEPTION IS GIVEN, DELAY THE TRANSACTION AND VERIFY WITH THE DEPARTMENT OF STATE (DOS).

- C. An official of a foreign government or a distinguished foreign visitor who has been so designated by the DOS.**

IF THIS ALIEN EXCEPTION IS GIVEN, DELAY THE TRANSACTION AND VERIFY WITH THE DOS.

- D. A foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business.**

IF THIS ALIEN EXCEPTION IS GIVEN, DELAY THE TRANSACTION AND VERIFY WITH THE DOS.

- E. Provide a WAIVER.**

IF THIS ALIEN EXCEPTION IS GIVEN, DELAY THE TRANSACTION AND VERIFY WITH THE DOS.

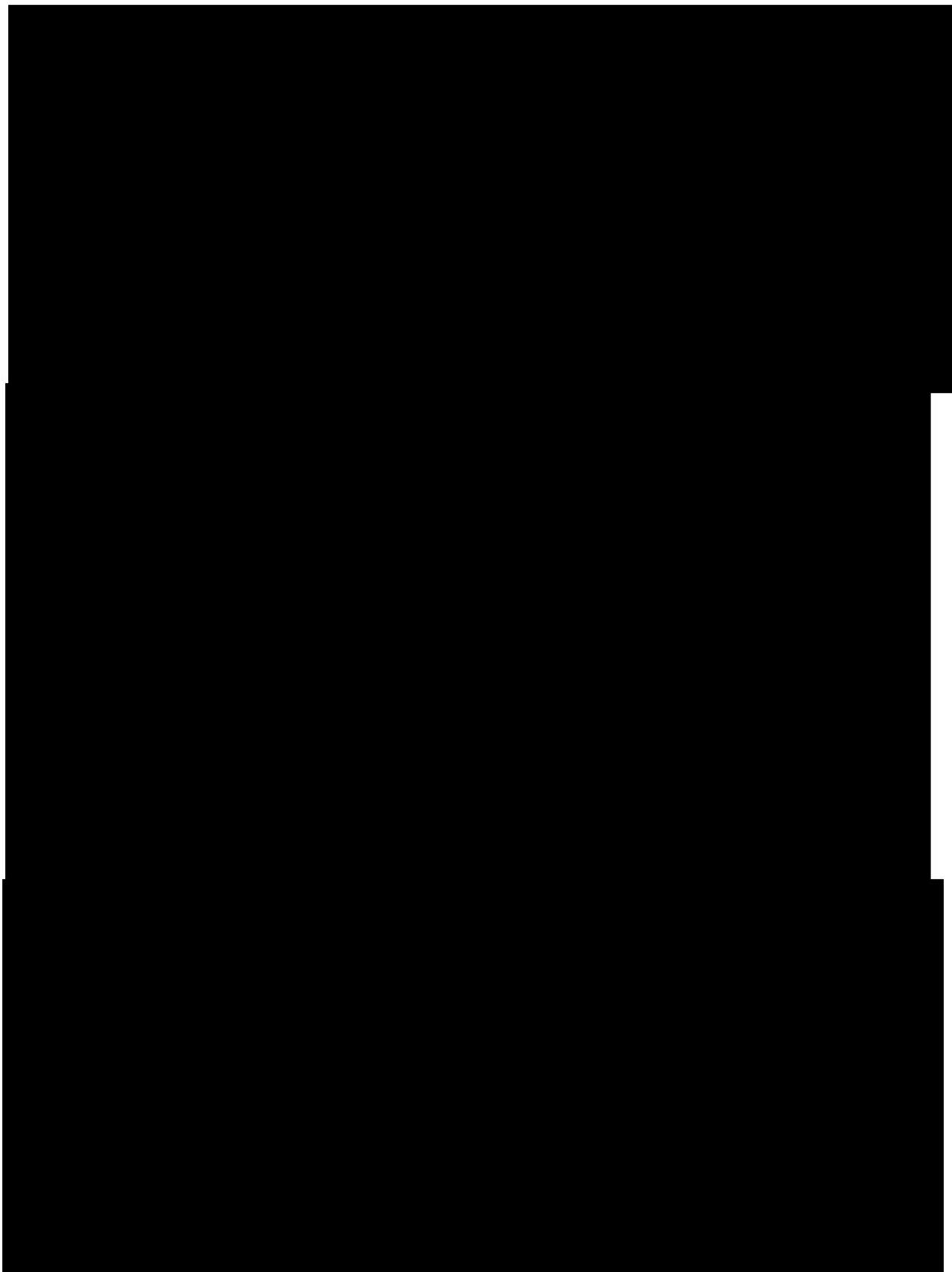
- F. OTHER**

IF THIS ALIEN EXCEPTION IS GIVEN, VERIFY EXACTLY WHAT WAS PROVIDED AS "OTHER" THEN MAKE THE PROPER DETERMINATION BASED ON THE INFORMATION PROVIDED.











# Redaction Log

<b>Reason</b>	<b>Page (# of occurrences)</b>	<b>Description</b>
2.2- 3706(B) (10) - Identity of Undercover Officer or Techniques	<b>41</b> (1) <b>50</b> (1) <b>51</b> (2) <b>55</b> (3) <b>56</b> (3) <b>57</b> (2) <b>58</b> (3) <b>59</b> (1) <b>61</b> (2) <b>72</b> (1) <b>104</b> (3) <b>106</b> (3)	Certain information has been redacted pursuant to 2.2-3706(B)(10) which states “the identity of any victim, witness, or undercover officer, or investigative techniques or procedures” are excluded from the mandatory disclosure provisions of this chapter, but may be disclosed by the custodian, in his discretion, except where such disclosure is prohibited by law.
2.2- 3706(D) - Non- criminal, personal, medical, financial	<b>94</b> (21) <b>96</b> (2)	Please note that certain information has been redacted pursuant to 2.2-3706(B) which states “materials that contain identifying information of a personal, medical, or financial nature may be withheld where the release of such information would jeopardize the safety or privacy of any person.”